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HCHAEL RODAK JR., CL

IN THE

### Supreme Court of the United States OCTOBER TERM, 1977

No. 77-753

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioner,

٧.

JOHN DANIEL,

Respondent.

No. 77-754

LOCAL 705, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AND LOUIS F. PEICK,

Petitioners.

₹.

JOHN DANIEL,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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DATE	PROCEEDINGS
10- 3-74	Filed complaint and 3 copies.
10- 3-74	Filed Designation.
10- 3-74	Filed Affidavit under General Rule 39.
10- 3-74	Filed Contingency Fee Agreement.
10- 4-74	Issued summons and 3 copies with 3 copies at to Teamsters Local No. 705, Teamsters Inter- national, D. C., and Louis Peick.
10-16-74	Filed Marshal's return on summons returned served as to International Brotherhood of Team sters, Chauffeurs, Warehousemen & Helpers of America Local 705 and Louis Peick (2 Services)
10-22-74	Filed Marshal's return on summons returned served as to International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Help ers of America.
10-25-74	Filed stipulation to extend time.
10-29-74	Enter order dated 10-25-74:—Enter order to extend time from October 29, 1974 through No yember 14, 1974 within which defendants Local

11-11-74 Enter order dated November 8, 1974; pursuant to General Order entered December 20, 1966, cause set for pretrial conference on January 31, 1975 at 9:30 a.m. in chambers, Room 2588. Austin, J. Mailed notices 11-11-74.

Mailed notices 10-29-74.

705 I. B. of T. and Louis E. Peick May plead to the complaint per stipulation. Austin, J.

11-14-74 Filed stipulation.

### DATE PROCEEDINGS

- 11-14-74 Enter order dated 11-14-74:—Enter order on stipulation of all parties to extend time from November 14, 1974 through November 22, 1974 in which all defendants may answer or otherwise plead to the complaint, granted. Lynch, J. Mailed notices 11-14-74.
- 11-22-74 Filed notice and motion of defendants to dismiss.
- 11-25-74 Enter order dated 11-22-74:—Motion of defendants Local 705 I.B. of T. and Louis F. Peick to dismiss the complaint taken under advisement. Leave to said defendants to file supporting brief in 10 days. Leave to plaintiff to file responsive brief in 10 days thereafter and leave to defendants to file reply in 5 days thereafter. Austin, J. Mailed notices 11-25-74.
- 11-29-74 Filed appearance of defendant with that of Bernard Weisberg as attorney.
- 11-29-74 Filed Affidavit under General Rule 39.
- 11-29-74 Filed stipulation of counsel.
- 11-29-74 Filed answer to complaint.
- 12-2-74 Enter order dated 11-29-74: Enter order that the motion of defendant International Brotherhood of Teamsters for leave to file instanter its answer to the complaint, pursuant to stipulation of the parties, is granted. Lynch, J. Mailed notices 12-2-74.
- 12-6-74 Filed Brief in support of defendant's motion to dismiss filed by Defendants Local 705 and Louis F. Peick.

### Docket Entries

- 12-6-74 Filed defendants notice of motion with motion for leave to file brief exceeding fifteen pages.
- 12-9-74 Enter order dated December 6, 1974: Motion for leave to file Brief exceeding fifteen pages granted. Time of plaintiff to file responsive brief extended an additional 20 days and leave to defendants to reply in 5 days thereafter. Austin, J. Mailed notices 12-9-74.
- 12-20-74 Filed plaintiff's Notice of Motion, Stipulation and Motion to extend time for filing memorandum.
- 12-23-74 Enter order dated 12-20-74: Motion and stipulation to extend time for filing memorandum opposing motion to dismiss of Teamsters Local and for leave to file calarged memorandum and other relief to and including January 20, 1975. Austin, J. Mailed Notices 12-23-74.
- 1-20-75 Filed Defendant's Notice.
- 1-20-75 Filed Motion of defendant International Brotherhood of Teamsters to Dismiss Counts I and II.
- 1-20-75 Filed Plaintiff's Notice of lotion and Motion to extend time for filing brief.
- 1-22-75 Enter order dated January 20, 1975: Leave to plaintiff to file memorandum in opposition to motion of Local 705 to dismiss on or before January 31, 1975 and the time of Local 705 to reply extended to February 6, 1975. Pre-stipulation leave to defendant International Brother-hood to file memorandum in support of motion to dismiss in 14 days. Leave to defendant Inter-

# national Brotherhood to file motion to dismiss counts I and II of complaint instanter. Cause continued to February 24, 1975 for status report. (Draft) Austin, J. Mailed notices 1-22-75. 1-22-75 Enter order dated January 21, 1975: Pre-trial conference scheduled for January 31, 1975 is cancelled. Austin, J. Mailed notices 1-22-75. 1-30-75 Filed plaintiff's notice of motion.

- 1-30-75 Filed plaintiff's motion to file his amendment to complaint by adding an additional count VI to the complaint.
- 1-30-75 Filed stipulation.
- 1-30-75 Filed plaintiff's motion to extend time for plaintiff to file his brief in opposition to defendant Local 705 motion and memorandum to dismiss complaint.
- 1-30-75 Filed stipulation.
- 1-30-75 Filed amend[ment] to complaint.
- 2- 3-75 Enter order dated 1-30-75; Per stipulation leave to plaintiff to file amendment to complaint instanter. Per stipulation leave to file plaintiff's brief in opposition to motion of defendant Local 705 to dismiss on or before February 7, 1975; Leave to plaintiff to file motion to dismiss defendant International Teamsters Union without prejudice and hearing thereon continued to February 24, 1975.—Austin, J. Mailed notices 1-31-75.
- 2- 4-75 Filed Notice of motion for leave to file brief.

### Docket Entries

- 2- 4-75 Filed Memorandum of International Brotherhood of Teamsters in support of its motion to dismiss counts I and II of the complaint.
- 2-5-75 Enter order dated 2-4-75: Motion for leave to defendant to file brief in excess of 15 pages granted. Leave to plaintiff to file responsive brief in 10 days and leave to defendant to reply in 7 days thereafter. Cause removed from status call for February 24, 1975 and continued to March 5, 1975 for a status report.—Austin, J.
- 1-30-75 Filed motion of plaintiff to voluntarily dismiss defendant International teamsters from this action without prejudice and supporting brief.
- 1-30-75 Filed stipulation of the parties local 705 & defendant Peick.
- 2- 7-75 Filed plaintiffs notice of motion.
- 2- 7-75 Filed plaintiffs motion to extend time to file his brief in opposition to defendant Local 705 motion and memorandum to dismiss complaint and for leave to file corrected amendment to complaint.
- 2- 7-75 Filed Stipulation re extension of time and memorandum to file brief.
- 2-7-75 Filed plaintiffs corrected amendment to complaint.
- 2-10-75 Enter order dated February 7, 1975: Pursuant to stipulation time of plaintiff to file memorandum in opposition of motion to dismiss extended to February 10, 1975, and leave granted to plaintiff to file brief in excess of 15 pages. Austin, J. Mailed notices 2/10/75.

DATE	PROCKEDINGS
2-10-75	Enter order dated February 7, 1975: Motion to extend time to file brief and to file corrected amendment to complaint instanter, granted. Austin, J. Mailed notices 2/10/75.
2-10-75	Filed affidavit of John B. Daniel.
2-10-75	Filed Plaintiffs brief in opposition to defendants motion to dismiss.
2-12-75	Filed defendant International Brotherhood of Teamsters' notice of taking deposition of plain- tiff.
2-18-75	Filed Plaintiff's memorandum in opposition to defendant International Brotherhood of Team- sters' memorandum in support of its motion to dismiss Counts I and II of the complaint.
2-18-75	Filed reply brief of defendant Local 705 et al in support of motion to dismiss.
2-18-75	Filed defendants notice of motion with motion to withdraw stipulation to dismiss Internati Brotherhood Teamsters as party defendant.
2-19-75	Enter order dated February 18, 1975: On the courts own motion status report rescheduled for February 24, 1975 is cancelled.
2-18-75	Filed plaintiffs notice of motion.
2-18-75	Filed plaintiffs motion to file instanter brief opposition to defendant Internati Brotherhood of Teamsters memorandum in support of motion to dismiss counts I and II of the complaint.
2-18-75	Filed plaintiffs motion to set briefing schedule.

### Docket Entries

- 2-18-75 Filed plaintiffs motion to defer deposition of plaintiff John Daniel.
- 2-19-75 Enter order dated February 18, 1975: Leave to plaintiff to file brief in opposition to International Teamsters motion to dismiss on or before February 19, 1975 and leave to file reply thereto on or before February 26, 1975. Plaintiffs motion to set briefing schedule for plaintiffs motion to dismiss denied. Motion plaintiff to defer deposition of John Daniel is denied and said deposition is limited to issue of class action and leave is granted to all parties in this action to participate in said deposition. Austin, J. Mailed notices 2/19/75.
- 2-19-75 Enter order dated February 18, 1975: Motion of defendants 705 and Louis F. Peick to withdraw stipulation to dismiss International Brotherhood of Teamsters granted without objection. Austin, J. Mailed notices 2/19/75.
- 2-27-75 Filed defendant's Notice.
- 2-28-75 Enter order dated February 27, 1975: Motion of defendant International Brotherhood of Teamsters for leave to file instanter Reply Brief 20 pages in length in support of its pending Motion to Dismiss Counts I and II granted. Status report set for March 5, 1975 is reset for March 12, 1975. Austin, J. Notices mailed 2/28/75.
- 2-27-75 Filed reply brief of defendant. International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America in support of its motion to dismiss counts I and II of the complaint.

### DATE PROCEEDINGS 3-5-75 Filed Notice of Motion. 3- 5-75 Filed plaintiff's Motion for leave to file. Filed Supplemental Memorandum of plaintiffs in opposition to defendant International Brotherhood of Teamsters motion to dismiss counts I and II of the complaint, Enter order dated 3-5-75; Motion of plaintiff for leave to file instanter a 3 page brief memorandum in response to new or inappropriate matters raised by defendant, Teamsters International in its reply brief, granted, Austin, J. Mailed Notices 3-6-75. Filed Notice. 3- 5-75 3- 5-75 Filed Motion of defendant Teamsters International for motion on plaintiff to appear for his deposition on Tuesday, March 11, 1975. Enter order dated 3-5-75; Motion argued, Leave granted to withdraw motion, -Austin J. Mailed Notices 3-7-75. 3- 7-75 Filed defendants notice of motion re leave to file reply to plaintiffs additional memorandum etc. Filed stipulation for plaintiff to withdraw his 3- 7-75 supplemental memorandum in opposition to defendant IBT motion to dismiss. 3 - 10 - 75Enter order dated March 7, 1975: Motion of defendant Teamsters International for leave to file instanter (1) its answer to plaintiffs corrected amendment to the complaint and (2) its reply to plaintiffs additional memorandum op-

posing the motion to dismiss, granted. Austin, J.

Mailed notices 3/10/75.

### Docket Entries

- 3-10-75 Enter order dated March 7, 1975. Motion pursuant to stipulation to permit plaintiff to withdraw his supplemental memorandum filed March 5, 1975 and for the same to be stricken and disregarded by the Court, granted. Austin, J. Mailed notices 3/10/75.
- 3-10-75 Enter order dated March 7, 1975: On the courts own motion, the status report set for March 12, 1975 is cancelled. Austin J. Mailed notices 3/10/75.
- 3- 7-75 Filed answer of defendant International Brotherhood to corrected count VI of complaint.
- 3-11-75 Enter order dated March 4, 1975: It is hereby ordered that this cause is reassigned to the calendar of Judge Flaum from the calendar of Judge Austin in exchange for 74 C 570 and 74 C 1892-1902.
- 3-14-75 Enter order dated March 3, 1975: This matter is transferred to the Executive Committee with the recommendation that it be reassigned to the calendar of Judge Flaum in return for twelve related cases received from him. Austin, J. Mailed notices 3/14/75.
- 3-14-75 Enter order dated March 5, 1975: The above captioned case is presently pending on my calendar. I recommend that the Executive Committee assign it to the calendar of Judge Flaum for the reason indicated below. Austin, J. Enter order dated March 10, 1975: It is hereby ordered that the above captioned case be and the same is hereby reassigned to the calendar of Judge Flaum for the reason indicated above. Robson, J. for the executive committee. Mailed notices 3/14/75.

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- 3-12-75 Filed Notice.
- 3-12-75 Filed defendant International Brotherhood of Teamsters, Chanffeurs, Warehousemen & Helpers of America's Motion for simultaneous consideration of class certification issues and plaintiff's motion to voluntarily dismiss International Teamsters.
- 3-12-75 Filed Memorandum in support of motion for simultaneous etc.
- 3-12-75 Filed plaintiff's motion to withdraw stipulation to withdraw supplemental memorandum of plaintiff's in opposition to defendant Teamsters' International motion to dismiss counts I and II of the complaint.
- 3-18-75 Enter order dated 3-12-75: The above captioned case is presently pending on my calendar. I recommend that the Executive Committee assign it to the calendar of Judge Austin for the reason indicated below. Flaum, J. Enter order dated 3-17-75: It Is Hereby Ordered that the above captioned cause be and the same is hereby reassigned to the calendar of Judge Austin for the reason indicated above. Will. J. Mailed Notices 3-18-75.
- 4-9-75 Enter order dated April 9, 1975. The motion for class certification is taken under Local Rule 13 for briefing. Plaintiff is granted 10 days to file a memorandum in support of class certification, defendants are granted 10 days thereafter to reply. The motion to voluntarily dismiss International Teamsters is also taken under Local Rule 13. Austin, J. Mailed notices 4-9-75.

- DATE PROCEEDINGS
- 4-22-75 Filed Plaintiffs notice of motion.
- 4-22-75 Filed Plaintiffs motion to defer the filing of a memorandum and motion with respect to class issues, etc.
- 4-22-75 Filed Memorandum in support of plaintiffs motion to defer the filing of a memorandum and motion with respect to class issues, etc.
- 4-23-75 Enter order dated April 22, 1975. Order leave plaintiff to file first wave and class interrogatories within 14 days, said interrogatories are limited to 20 questions. Plaintiffs memo with respect to class issues to be filed within 60 days, defendants' answering memo and answering memo re motion to dismiss to be filed within 20 days thereafter. Will, J. Mailed notices 4-23-75.
- 4-28-75 Enter order dated April 16, 1975. This matter is transferred to the Executive Committee with the recommendation that it be reassigned to the calendar of Judge Marovitz in return for the Bresler Ice Cream Co. Cases, 73 C 1397, 73 C 2777, and 74 C 1668. Austin, J. Mailed notices 4-28-75.
- 4-28-75 (a) Enter order dated April 18, 1975. ORDERED transfer of case to the executive committee for reassignment for return for the Bresler Ice Cream cases, 73 C 1397, 73 C 2777 and 74 C 1668, Austin, J.
  - (b) Enter order dated April 23, 1975: Ordered that this case be and the same is hereby reassigned to the calendar of Judge Marovitz, for the reason indicated in (a). For The Executive Committee, Parsons, J. Mailed notices 4-28-75 (Reassigned to Judge Marovitz).

### DATE PROCEEDINGS

- 5-6-75 Filed plaintiff's consolidated interrogatories to defendants International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, etc., et al. Set No. 1.
- 5-7-75 Filed plaintiff's notice of motion with motion for entry of order of this court allowing him to file first wave of interrogatories as of May 6, 1975.
- 5-8-75 Enter order dated May 7, 1975. Enter order granting motion of plaintiff for entry of an order of this court allowing him to file first wave of interrogatories as of May 6, 1975, the date of actual filing, which date is 2 days later than heretofore authorized by order of court. Time to answer or object is extended to August 18, 1975. Leave is granted plaintiff to file reply brief to defendants reply brief. Motions to dismiss the complaint are set for disposition on July 18, 1975 at 10:00 a.m.—Marovitz, J. Mailed notices 5-8-75.
- 5-22-75 Filed notice.
- 5-22-75 Filed defendant, Teamsters International's motion to correct minute order entered May 7, 1975 to show plaintiff's motion for leave to file interrogatories withdrawn, not granted.
- 5-23-75 Enter order dated May 22, 1975. Enter order granting motion of defendant Teamsters International to correct minute order of May 7, 1975 to show motion of plaintiff for leave to file interrogatories withdrawn, not granted. Marovitz, J. Mailed notices 5-23-75.

### Docket Entries

- DATE PROCEEDINGS
- 6-6-75 Filed deposition of John B. Daniel.
- 7-17-75 Clerk's file copy of transcript of proceedings had before Honorable Hubert L. Will on April 22, 1975, filed by official court reporter.
- 7-22-75 Enter order dated July 18, 1975. Order cause is continued for disposition of motions to dismiss on November 21, 1975 at 11:00 a.m. Marovitz, J. Mailed notices 7-22-75.
- 9-22-75 Enter order dated September 22, 1975. On court's own motion, order cause set for status report on October 10, 1975 at 10:00 a.m. McGarr, J. Mailed notices 9-22-75.
- 9-19-75 Order cause reassigned to JUDGE McGARR (DRAFT)—The Executive Committee.
- 10- 9-75 Filed motion for plaintiff class action certification.
- 10- 9-75 Filed motion for defendant class action certifi-
- 10-10-75 Enter order dated October 9, 1975. Motion for plaintiff class action certification and motion for defendant class action certification are entered and continued generally. Status report set for October 10, 1975 is vacated. McGarr, J. Mailed notices 10-10-75.
- 10- 9-75 Filed defendants' notice.
- 10- 9-75 Filed defendants' supplemental memorandum of defendant International Brotherhood of Teamsters in support of its motion to dismiss Counts I and II of the complaint.

### Docket Entries

### DATE PROCEEDINGS

- 10-10-75 Enter order dated October 9, 1975. Enter order: motion of defendant Teamster International for leave to file instanter supplemental memorandum in support of its pending motion to dismiss Counts I and II is granted. McGarr, J. Mailed notices 10-10-75.
- 10-10-75 (A) Enter order dated October 8, 1975: Ordered transfer of case to the Executive Committee for reassignment for reasons indicated on letter attached, to this order. McGarr, J. (B) Enter order dated October 8, 1975: Ordered that this cause be reassigned to Judge Austin for the reason indicated on letter attached to order. Enter for the Executive Committee—Parson, C.J. Mailed notices 10-10-75. (Reassigned to Judge Austin)
- 10-15-75 Order cause reassigned to Kirkland. (Draft)—
  The Executive Committee.
- 10-20-75 Filed plaintiffs notice of motion with motion to vacate order allowing defendant Teamsters International to file supplemental memorandum and to enter order continuing such matter generally.
- 10-21-75 Enter order dated October 20, 1975: Plaintiffs motion to vacate order allowing defendant Teamsters International to file supplemental memorandum entered and continued before the Judge to whom this case will be reassigned. Will, J. Mailed notices 10-21-75.
- 10-30-75 Filed defendants notice.

- 10-31-75 Enter order dated October 30, 1975. Ordered that cause is continued to December 2, 1975 for a report on status.—Kirkland, J. Mailed notices 10-31-75.
- 12- 1-75 Filed plaintiff's consolidated interrogatories to defendants' Set No. 1.
- 12- 3-75 Enter order dated 12-2-75, Cause is continued to December 18, 1975 for a further status report. Kirkland, J. Mailed notices 12-3-75.
- 12-18-75 Filed defendant's notice.
- 12-18-75 Filed defendants Local 705 and Peick's notice or motion; Motion of defendants that the court reject the plaintiff's first set of consolidated interrogatories or that their responses be stayed.
- 12-18-75 Filed Plaintiff's reply memorandum in opposition to defendant International Brotherhood of the Teamsters' motion to dismiss Counts I and II of the complaint.
- 12-18-75 Filed defendant Teamsters International to strike plaintiff's first set of interrogatories.
- 12-19-75 Enter order dated 12-18-75; Defendants' motion to strike plaintiff's interrogatories is to be briefed on a simultaneous schedule to plaintiffs motion to certify class. The movants in each motion are to file first brief January 17, 1976, respective answer briefs are due 20 days thereafter and reply briefs 10 days later. Cause is continued to May 4, 1976 for report on status.— Kirkland, J. Mailed notices 12-19-75.

### DATE PROCEEDINGS 12-19-75 Enter order dated 12-18-75; Filed Memorandum of Court regarding order of procedure in the above-entitled cause-Kirkland, J. Mailed notices 12-19-75. 12-19-75 Filed Memorandum of Court. 1-27-76 Filed plaintiff's notice of motion with motion to allow filing instanter plaintiff's addition to the defendant Class motion heretofore filed. 1-28-76 Enter order dated 1-27-76; Motion to allow filing instanter plaintiff's addition to the defendant class motion heretofore filed is granted. Previously set status date of May 4, 1976 remains in effect. The memorandum in support of plaintiff's motion for plaintiff and defendant class action certification and determination pursuant to Rule 23 of the FRCP is given a briefing schedule of 30 days for defendants response and 15 days for plaintiff's reply.-Kirkland, J. Mailed notices 1-28-76. Filed plaintiff's amendment to plaintiff's motion for defendant class certification. Filed Memorandum of defendant Teamsters International in support of motion to strike plaintiff's interrogatories. Enter order dated 1-27-76; Motion of defendant 1-28-76 International Brotherhood of Teamsters for leave to file instanter its memorandum in support of its motion to strike plaintiff's interrogatories is granted. Plaintiffs are to file answering brief by February 16, 1976 and defendants reply February 26, 1976. Previously set status date

of May 4, 1976 remains in effect. KIRKLAND, J.

Mailed notices 1-28-76.

### Docket Entries

DATE	f modemonico.
1-27-76	Filed plaintiff's notice of motion with motion
	for leave to file second amendment to complaint.

PROCEEDINGS

- 1-27-76 Filed plaintiff's second amendment to the complaint.
- 1-27-76 Filed Memorandum in support of plaintiff's motion for plaintiff and defendant class action certification and determination pursuant to Rule 23 of the FRCP.
- 1-28-76 Enter order dated 1-27-76; Plaintiff's motion for leave to file second amendment to complaint instanter is granted. Briefing schedule re-filing of second amendment to complaint is set at 20 days for a response and 10 days for a reply. Previously set status date of May 4, 1976 remains in effect. Kirkhand, J. Mailed notices 1-28-76.
- 3- 2-76 Issued summons and nine copies with nine copies of complaint to as to all defendants per amended complaint.
- 3-2-76 Enter order dated 3-1-76: Enter Memorandum opinion and order (Draft) Defendants' motions to dismiss the complaint are denied in their entirety.—Kirkland, J. Mailed notices 3-2-76.
- 2-26-76 Filed defendant Local 705 and Peick's notice of motion; Motion to extend time within which to file their briefs with respect to the class action and other issues.
- 3-3-76 Enter order dated 3-2-76; All parties are allowed 20 days to file briefs or briefs in support of motions already on file. Discovery matters will be referred to a Magistrate. Kirkland, J. Mailed notices 3-3-76.

### DATE PROCEEDINGS

- 3-3-76 Enter order dated 3-2-76; Defendant Teamsters International are allowed an extension of time of 20 days within which to file brief opposing plaintiffs motion to certify a class. Kirkland, J. Mailed notices 3-3-76.
- 3-5-76 Enter order dated 3-3-76; Pursuant to Rule and Rule 1.01 C, this case is being referred to the Executive Committee for referral to a Magistrate for the resolution of all pending and future discovery matters. (b) It is hereby ordered that the above captioned case be referred by lot to a Magistrate of this Court according to the rules. Reassigned to Magistrate Sussman. Parsons, Chief Judge for Executive Committee. Mailed notices 3-8-76.
- 3-9-76 Enter order dated 3-8-76; This matter is set for status on Tuesday, April 27, 1976 at 9:30 a.m.—Sussman, M. Mailed notices 3-9-76.
- 3-15-76 Enter order dated 3-15-76; It is hereby ordered that the above captioned case be referred by lot to a Magistrate of this Court according to the Rules. Parsons, J. Referred to Magistrate Baloo. Mailed notices 3-15-76.
- 3-15-76 Enter order dated 3-11-76. It appearing that this cause was previously referred to a Magistrate, it is hereby ordered that the order of March 5, 1976 referring this cause to a magistrate according to the rules is vacated. Parsons, J. Mailed notices 3-15-76.
- 3-16-76 Filed Plaintiff's Memorandum in opposition to defendants' motion and memorandum to strike plaintiff's interrogatories.

### Docket Entries

- 3-23-76 Filed summons returned served on Local 705 Intern'l Bro'hood of Teamsters, etc. Frank Kraty, Bruno Fillipini, Peter Janopolous, Frank Bridge, W. Eugene McCarron, Ralph Nieders, Sr. and M. W. Siewart, Jr.
- 4-13-76 Filed affidavit of Joseph E. Dean.
- 4-13-76 Filed affidavit of Cramer M. Gilmore 11 with Exhibit A & B.
- 4-13-76 Filed defendant, Local 705 International Brotherhood of Teamsters, Chauffeurs, Warchousemen, and Helpers of America's brief in support of their motion to vacate the court's March 1, 1976 order as it relates to Counts I and II.
- 4-13-76 Filed defendants Local 705 International Brotherhood of Teamsters, etc. and Louis F. Peick's notice of motion with motion to vacate the March 1, 1976 order and dismiss Counts I & II of the complaint, or to amend the order to certify pursuant to 28 USC Section 1292(b).
- 4-13-76 Filed defendant, International Brotherhood of Teamsters etc. notice of filing motion to reconsider the order of March 1, 1976.
- 4-13-76 Filed defendant, International Brotherhood of Teamsters etc. motion (I) to reconsider the Court's order of March 1, 1976, Re: Counts I and II, to vacate that order and enter an order dismissing said counts; (II) or, alternatively, to amend said order to provide for certification pursuant to 28 U.S.C. Section 1292(b).

### DATE PROCEEDINGS

- 4-14-76 Enter order dated April 13, 1976: Motions of defendants' for a review and reconsideration of Court's order entered on or about March 1, 1976 are denied. Defendant International Brother-hood of Teamsters denied leave to file its brief to review and reconsider. Defendants have until April 22, 1976 to file answer brief re: class certification. Reply brief due 30 days thereafter.

  Cause continued to April 16, 1976 for submission of certain agreed order. Kirkland, J. Mailed notices 4-14-76.
- 4-19-76 Enter order dated April 19, 1976: Motions of defendants for reconsideration of Court's order of March 1, 1976 are denied. The alternative motions of defendants for amendment of Court's order of March 1, 1976 are allowed. Motion of defendant International Brotherhood of Teamsters that proceedings herein be stayed pending interlocutory appeal is denied. Kirkland, J. (DRAFT) Mailed notices 4-19-76.
- 4-21-76 Filed defendants' notice of filing appearance for the additional defendants, those defendants' Motion to Dismiss, all local defendants' opposition to the plaintiff's requested class certifications, and brief in support thereof.
- 4-21-76 Filed appearance of defendants W. Eugene Mc-Carron, Bruno Fillippini, Frank Bridge, M. J. Siewert, Jr., Peter Janopolous, and Ralph Nicdert, as Trustees of the Local 705 International Brotherhood of Tenusters Pension Fund, and Frank Kratky, and that of their attorney Sherman Carmell.

### Docket Entries

- 4-21-76 Filed motion of additional defendants to dismiss the second amended complaint.
- 4-21-76 Filed opposition of defendant trustees of the Local 705 pension fund and certain officers of Local 705 to the plaintiff's requested class certifications.
- 4-21-76 Filed Local defendants' brief in opposition to the plaintiff's requested class certifications.
- 4-22-76 Filed affidavit of Joseph W. Ballew.
- 4-22-76 Filed defendant International Brotherhood of Teamsters' motion for oral argument on class issues pursuant to Local Rule 13(d).
- 4-22-76 Filed defendant International Brotherhood of Teamsters' memorandum in opposition to plaintiff's motion for certification of plaintiff and defendant classes and with respect to plaintiff's motion for voluntary dismissal as to defendant International Brotherhood of Teamsters.
- 4-28-76 Enter order dated April 27, 1976. Status conference held. Matter continued for further status on Tuesday, June 15, 1976 at 9:00 a.m. Sussman, M. Mailed notices 4-28-76.
- 6-8-76 Filed plaintiff's notice of motion with motion for extension of time to file memorandum in response to defendants' memorandum in opposition to plaintiff's motion for plaintiff's and defendants' class action certification.

### DATE PROCEEDINGS

- 6-9-76 Enter order dated June 8, 1976: Motion for extension of time to file plaintiff's memorandum in response to defendants' memorandum in opposition to plaintiff's motion for plaintiff's and defendants' class action certification to July 31, 1976 is granted. Ruling on motions to be rendered by mail. Cause is given a future status report date of October 21, 1976. Kirkland, J. 'Mailed notices 6-9-76.
- 6-18-76 Enter order dated 6-17-76; Order defendants to make appropriate responses to interrogatories, etc. Set for status on September 30, 1976 at 9:00 n.m. DRAFT. SUSSMAN, M. Mailed notices 6-18-76.
- 6-18-76 Filed certified copy of order from U.S.C.A. This matter comes before the Court on the "Petition for permission to appeal under 28 USC Sec. 1292(b); filed herein on May 3, 1976 by counsel for the defendants petitioners. The plaintiffrespondent was today granted permission to file instanter his memorandum in response to the aforesaid petition. Also as of this date, the National Coordinating Committee for Multiemployer Plans was granted permission to file an amicus curiae brief in support of the defendant-petitioners' petition for permission to appeal. It is ordered that the defendants' petitioners' petition for permission to appeal from the interlocutory orders of March 1, 1976 and April 19, 1976 is hereby granted, (\$5.00 paid).
- 6-24-76 Transmitted copy of docket to U.S.C.A.—7th Circuit, and Mailed copy of certified copy of order from U.S.C.A. to Lawrence Walner & Assoc., Peter J. Barack, Sherman Carmell, and Sidney Dickstein.

### Docket Entries

- 6-25-76 Filed bond on appeal. (\$250.00).
- 7-2-76 Filed defendant IBT description of transcript ordered.
- 7-12-76 Filed motion of defendant I.B.T. for extension of time for transmission of record on interlocutory appeal.
- 7-14-76 Enter order dated 7-12-76. Motion of Teamsters International pursuant to Rule 11 (d) of Federal Rules of Appellate procedure for two-week extension to August 10, 1976 of time to transmit record on appeal granted.—Grady, J. Mailed notices 7-14-76.
- 7-14-76 Filed answer of defendant IBT to plaintiff's first set of interrogatories.
- 7-27-76 Filed Designation for full record on appeal.
- 8- 4-76 Filed Notice.
- 8- 4-76 Filed Motion to extend time to transmit record.
- 8-6-76 Enter order dated 8-4-76: Motion of defendant I.B.T. for extension of time until August 31, 1976 to transmit record on appeal, granted. Motion of plaintiff for an extension of time until October 1, 1976 to file reply brief is granted. Cause is continued to December 2, 1976 at 10:00 AM for further status report.—Kirkland, J. Mailed Notices 8-6-76.
- 8- 4-76 Filed withdrawal of plaintiff's motion to dismiss voluntarily defendant Teamsters' International.
- 8-27-76 Clerks filed copy of transcripts of proceedings had before Judge Kirkland on April 13, 1976 filed by official Court reporter.

IN THE

United States District Court

For the Northern District of Illinois

Eastern Division

Case No. 74 C 2865

JOHN DANIEL, for himself and on behalf of all others similarly situated,

Plaintiff.

-v.-

International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization; and Local 705 International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization, by themselves and as representatives of the class of all local Teamster affiliate unions similarly situated; and Louis Peick, by himself and as representative of all Trustees of all Teamster pension funds and as representative of all Officers of all Teamster unions similarly situated,

Defendants.

Now comes the Plaintiff, John Daniel, by his attorneys, Peter J. Barack and Lawrence Walner, and complaining of the Defendants, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization, and Local 705 International

### Complaint

Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization, by themselves and as representatives of the class of all local Teamster affiliate unions similarly situated; and Louis Peick, by himself and as representative of all Trustees of all Teamster pension funds and as representative of all Officers of all Teamster unions similarly situated, brings this civil action for himself and on behalf of all other members of all Teamster unions as a class pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for cause of complaint alleges:

### COUNT I

### JURISDICTION

1. The jurisdiction of this Court to hear Counts I-II of this Complaint is based on Section 27 of the Securities Exchange Act of 1934, 15 U.S.C. Section 78a-78jj (hereinafter referred to as "Exchange Act"), and on Section 22(a) of the Securities Act of 1933, 15 U.S.C. Section 77a-77aa (hereinafter referred to as the "Securities Act"), and as hereinafter set forth, this action involves violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder as set forth in 17 CFR. 240.10(b)-5 and Section 17(a) of the Securities Act. The jurisdiction of this Court to hear Count III of this Complaint is based on the original jurisdiction of the Court to hear "any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies," 28 U.S.C., Section 1337, and on Section 301(a) of the National Labor Relations Act, 29 U.S.C. Section 185(a) (hereinafter referred to as "NLRA"), and as hereinafter set forth, this action involves violations of Section 9(a) of the NLRA, 29 U.S.C. Section 159(a). This Court has pendant jurisdiction to hear Counts IV-V of this Complaint and, as hereinafter set forth more fully. Counts

IV-V of this Complaint involve claims, based on fraud and breach of fiduciary duty, which arise out of a nucleus of operative fact common to Counts I-III of this Complaint.

This action is not a collusive one to confer jurisdiction upon a Court of the United States which it would not otherwise have.

### VENUE

3. The Defendants named in this Complaint are inhabitants of, are found in, or transact business within the Northern District of Illinois. (Section 22(a) of the Securities Act and Section 27 of the Exchange Act). The sales of securities involved herein took place, in part, in the Northern District of Illinois. (Section 22(a) of the Securities Act.) The Defendant labor union organizations named in this Complaint maintain their principal offices within or have their duly authorized officers or agents engaged in representing or otherwise acting for their members within the Northern District of Illinois (Section 301(c) of the NLRA).

### PLAINTIFF

- 4. The Plaintiff, John Daniel, is a resident of the State of Illinois.
- 5. The Plaintiff is proceeding here on behalf of himself and on behalf of all other members of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America (hereinafter referred to as "Teamsters International"), Local 705 International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America (hereinafter referred to as "Local 705") and all other affiliate locals of the Teamsters International as a class, who have purchased and acquired an interest in a Teamsters pension fund.

### Complaint

6. The Plaintiff, by his attorneys, brings this action on his own behalf and, pursuant to Rule 23 of the Federal Rules of Civil Procedure, as representative of the class of all other members of Teamsters International, Local 705, and all other affiliate locals of Teamsters International in the United States as described above. Said members of the class are similarly situated and are so numerous that joinder of all members is impracticable. Except as to the amount of damages each member of the class has by himself sustained, all other questions of law and fact are common to the class. The rights of the members of the class involve such common questions of law and fact which predominate over any questions affecting the Plaintiff named herein. This class action is superior to other methods for the fair and efficient adjudication of the controversy herein described. The claims of the Plaintiff are typical of those to be asserted for the class. Plaintiff will fairly and adequately protect the interests of the class.

### DEFENDANTS

7. Defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America is a national labor union organization consisting principally of a voluntary association of drivers of various vehicles and other workers. Teamsters International is named herein as a Defendant by itself and as a representative of the class of all local Teamster affiliate unions. By means of its constitution and the constitution of its various local affiliates, the allocation of dues and other monies, and various other ways, Teamsters International is contractually related to and otherwise associated and affiliated with its local Teamster union organizations throughout the United States. Moreover, on information and belief, Teamsters International also assists Local 705 and all other local affiliates of Teamsters International in the investment and man-

agement of monies held in Trust by the pension plans of all such local Teamster affiliates.

- 8. Defendant Local 705 International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America is a labor union organization and local affiliate of Teamsters International, and is named herein as a Defendant by itself and as a representative of the class of all local affiliates of Teamsters International similarly situated.,
- 9. Defendant Louis Peick is a Trustee of the pension trust fund of Local 705, and is named herein as a Defendant by himself and as a representative of all Trustees of all Teamster pension trust funds. Defendant Peick is also an Officer of Local 705 and is also named herein as a Defendant as a representative of all Officers of Teamsters International and of all local affiliates of Teamsters International.
- 10. At all times hereinafter mentioned, the Defendants, jointly and/or individually, individually or as a servant, agent, trustee, or representative for each of the other Defendants, and each of them, acted for, ratified, and approved all of the acts alleged herein by each of the other Defendants; and the Defendants, at all times hereinafter mentioned, jointly and/or individually, individually or as servant, agent, trustee, or representative for each of the other Defendants, and each of them acted in concert with each of the other Defendants and aided and abetted each of the other Defendants in and with respect to all of the acts alleged herein.

### FACTS

11. Teamsters International, Local 705, and all other local affiliates of Teamsters International negotiate labor

### Complaint

contracts with companies across the United States for the benefit of their members who are employees of such companies. Pursuant to the various terms and conditions of such contracts, the union members of Teamsters International, Local 705, and all other local affiliates of Teamsters International customarily agree to provide their labor services to and to work as employees of such companies in return for the payment of wages and the receipt of various other forms of consideration.

- 12. At least since 1955, or earlier, all or most of the labor contracts negotiated by Teamsters International, Local 705, and all other local affiliates of Teamsters International have provided for the establishment of pension plans for their union members. Pursuant to the terms of such labor contracts, companies who employ Teamster union members agree to make certain set payments into local Teamster affiliate or Teamsters International pension funds for such Teamster union members and as part consideration for the labor services provided by such union members. Such monies contributed into local Teamster affiliate or Teamsters International pension funds are customarily held in trust and invested by pension trust fund Trustees. Teamster union member employees thus contribute their labor services in return for, in part, their participating interest in such local Teamster affiliate or Teamsters International pension trust fund.
- 13. The pension plans established by the Teamsters International, Local 705, and all other local affiliates of Teamsters International do not differ in any material respect for the purposes of this litigation. All such pension plans have very long and arbitrary vesting periods. Under the length requirement of the vesting period provisions of the Teamster pension plans, no pension benefit of any kind is available to a Teamster union member who does not meet

the requisite vesting period. As a result, all contribution paid into any such pension fund by an employer for a Teamster union member employee would, if the length requirement were not met, be forfeited, and the value of the member's interest in the pension fund would be worthless. Although the length requirement of the vesting period may vary in some insignificant amount between the pension plans established by the Teamsters International, Local 705, and all other local affiliates of Teamsters International, the provisions requiring forfeiture and the denial of any pension benefit are the same.

14. All or most of the pension plans established by the Teamsters International, Local 705, and all other local affiliates of Teamsters International require not only a lengthy and arbitrary vesting period but also continuity of employment with an employer, or employers, who have entered into a labor contract with a Teamsters union over the full length of the vesting period. Under the continuity requirement or break in service rule of the Teamster pension plans, no pension benefit of any kind is available to a Teamster union member who has been employed with a covered employer, or employers, for the full length requirement of the vesting period but whose employment career is not continuous and uninterrupted. As a result, all contributions paid into any such pension fund by an employer for a Teamster union member employee would in this situation be forfeited, and the value of the member's interest in the pension fund would be worthless.

15. All monies contributed into a local Teamster affiliate or Teamsters International pension fund are invested by pension trust fund Trustees, and such trust funds would over the long run be reasonably expected to grow through the accumulation of dividends, interest and other earnings. A Teamster union member who does not meet the length

### Complaint

or continuity requirement of the vesting provision of his Teamster union pension plan will also forfeit his participating interest in any accumulated earnings on all employer contributions made on his behalf.

16. Plaintiff John Daniel has been a member of Local 705 since 1951. Plaintiff has paid or has had employer payments made on his behalf into the Local 705 pension fund for a period of about twenty-two and one-half years (221/2), including past service contributions. The vesting provision of the Local 705 pension plan requires a union member to have worked for a covered employer, or employers, for twenty (20) consecutive years of uninterrupted service. Because Plaintiff John Daniel's twenty-two and one-half years (221/2) of service with a covered employer, or employers, were interrupted by a four, or seven, month break from December, 1960 to July, 1961, he has been denied all benefits under the Local 705 pension plan. All employer contributions made on his behalf into the Local 705 pension fund have, accordingly, been forfeited, even though such break in service was occasioned by an involuntary lay off. All accumulated earnings on all employer contributions made on his behalf into the Local 705 pension fund have likewise been forfeited.

17. Beginning at least as early as 1955, and continuing until the present time, labor union defendants Teamsters International Local 705, and all other local affiliates of Teamsters International, and the individual Trustees of all Teamster pension funds, and the individual Officers of all Teamster unions, have, through the use of the mails and other instrumentalities of interstate commerce, knowingly misrepresented certain material facts and omitted to state other material facts relating to the value of a Teamster union member's participating interest in his local Teamster affiliate or Teamsters International pension fund.

Such misrepresentations of certain material facts made by the Defendants and the omission to state other material facts include, but are not limited to:

### A. Misrepresentations:

- (1) Misleading statements as to the length requirement of the vesting provision for the payment of a benefit from a local Teamster affiliate or Teamsters International pension fund to a Teamster union member; and
- (2) Misleading statements as to the continuity requirement of the vesting provision for the payment of a benefit from a local Teamster affiliate or Teamsters International pension fund to a Teamster union member.

### B. Omissions of Material Fact:

- (1) Omitting to state that a Teamster union member would receive no pension benefit from a local Teamster affiliate or Teamsters International pension fund if he did not meet the length requirement of the vesting provision of such fund;
- (2) Omitting to state that a Teamster union member would receive no pension benefit from a local Teamster affiliate or Teamsters International pension fund if he did not meet the continuity requirement of the vesting provision of such fund;
- (3) Omitting to state that all employer contributions made on behalf of a Teamster union member into a local Teamster affiliate or Teamsters International pension fund would be forfeited if the Teamster union member did not meet the length and continuity requirements of the vesting provision of such fund;

### Complaint

- (4) Omitting to state that all accumulated earnings on all employer contributions made on behalf of a Teamster union member into a local Teamster affiliate or Teamsters International pension fund would be forfeited if the Teamster union member did not meet the length and continuity requirements of the vesting provision of such fund;
- (5) Omitting to state the actuarial basis on which any local Teamster affiliate or Teamsters International pension fund has been constructed and the actuarial likelihood that a Teamster union member will receive back as a pension benefit any or all of any employer contributions made on his behalf into a local Teamster affiliate or Teamsters International pension fund;
- (6) Omitting to state that the actuarial basis on which any local Teamster affiliate or Teamsters International pension fund has been constructed is arbitrary and without any reasonable basis in fact; and
- (7) Omitting to state that funds held in trust for local Teamster affiliate or Teamsters International pension funds have been diverted from their lawful purposes and have been used by the Defendants to their own benefit or to the benefit of others or to enhance Defendants' own position, status, or prestige, or to enhance the position, status or prestige of others.
- 18. As a result of such misrepresentations by Defendants of certain material facts and the omission by Defendants to state other material facts and the failure of Defendants to make full and complete disclosure as to the value of a Teamsters union member's participating interest

in his local Teamster affiliate or Teamsters International pension fund, Plaintiff and all other members of the class he represents have purchased and acquired an interest in a local Teamster affiliate or Teamsters International pension fund by agreeing to provide their labor services to employers who have labor contracts with any such local Teamster affiliate or Teamsters International.

### VIOLATIONS ALLEGED

- 19. The misrepresentations of certain material facts and the omission to state other material facts relating to the value of a Teamster union member's participating interest in his local Teamster affiliate or Teamsters International pension fund by Defendants International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization, and Local 705 International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization, by themselves and as representatives of the class of all local Teamster affiliate unions similarly situated, and Louis Peick, by himself and as representative of all Trustees of all Teamster pension funds and as representative of all Officers of all Teamster unions similarly situated, constitute a violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in that Defendants have, in connection with the sale to Plaintiff, and all other members of the class he represents, of a security:
  - a) used means and instrumentalities of commerce and the mails; and have
  - b) employed a device, scheme, or artifice to defraud;
     and
  - made untrue statements of material fact or omitted to state a material fact necessary in order to make

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the statements made, in light of the circumstances under which they were made, not misleading; and

- d) engaged in acts, practices, and a course of business which operated as a fraud or deceit upon Plaintiff and all other members of the class he represents.
- 20. As a direct and proximate result of Defendants' violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Plaintiff and all other members of the class he represents have sustained substantial loss and injury.

### PRAYER FOR RELIEF

WHEREPORE, Plaintiff prays that this Court:

- a) Make a determination that the named Plaintiff represents all other Teamster union members in the United States as a class as heretofore alleged;
- b) Find that Defendants International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization, and Local 705 International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization, by themselves and as representatives of the class of all local Teamster affiliate unions similarly situated; and Louis Peick, by himself and as representative of all Trustees of all Teamster pension funds and as representative of all Officers of all Teamster unions similarly situated, have violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;
- c) Order that all pension fund agreements of the Teamsters International and all local Teamster affiliate unions be reformed by deleting therefrom all arbitrary length and continuity requirements of

all vesting provisions in such pension fund agreements;

- d) Enter judgment against the Defendants in an amount equal to all pension benefits unlawfully denied Plaintiff and all other members of the class he represents, with interest thereon;
- e) Enter judgment against the Defendants in an amount equal to all those funds held in trust for local Teamster affiliate or Teamsters International pension funds which have been unlawfully diverted from their proper purposes; and
- Grant such other and further relief as this Court deems to be fair and equitable under the circumstances.

### COUNT II

1.-18. Plaintiff herein realleges the allegations of Paragraphs 1 through 18 of Count I.

### VIOLATIONS ALLEGED

19. The misrepresentations of certain material facts and the omission to state other material facts relating to the value of a Teamster union member's participating interest in his local Teamster affiliate or Teamsters International pension fund by Defendants International Brother-hood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization, and Local 705 International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization, by themselves and as representatives of the class of all local Teamster affiliate unions similarly situated; and Louis Peick, by himself and as representative of all Trustees of all Teamster pension funds and as representative of all Officers of all Teamster unions similarly

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situated, constitute a violation of Section 17(a) of the Securities Act in that Defendants have, in the offer or sale to Plaintiff, and all other members of the class he represents, of a security:

- a) used means or instruments of transportation or communication in interstate commerce, or the mails;
   and have
- b) employed a device, scheme, or artifice to defraud;
   and
- c) obtained money or property by means of an untrue statement of material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- d) engaged in transactions, practices and a course of business which operated as a fraud or deceit upon Plaintiff and all other members of the class he represents.
- 20. As a direct and proximate result of Defendants' violation of Section 17 of the Securities Act, Plaintiff and all other members of the class he represents have sustained substantial loss and injury.

### PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

- a) Make a determination that the named Plaintiff represents all other Teamster union members in the United States as a class as heretofore alleged;
- b) Find that Defendants International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization, and Local 705 International Brotherhood of Teamsters,

Chauffeurs, Warehousemen, and Helpers of America, a labor union organization, by themselves and as representatives of the class of all local Teamster affiliate unions similarly situated; and Louis Peick, by himself and as representative of all Trustees of all Teamster pension funds and as representative of all Officers of all Teamster unions similarly situated, have violated Section 17 of the Securities Act;

- c) Order that all pension fund agreements of the Teamsters International and all local Teamster affiliate unions be reformed by deleting therefrom all arbitrary length and continuity requirements of all vesting provisions in such pension fund agreements;
- d) Enter judgment against the Defendants in an amount equal to all pension benefits unlawfully denied Plaintiff and all other members of the class he represents, with interest thereon;
- e) Enter judgment against the Defendants in an amount equal to all those funds held in trust for local Teamster affiliate or Teamsters International pension funds which have been unlawfully diverted from their proper purposes; and
- f) Grant such other and further relief as this Court deems to be fair and equitable under the circumstances.

### COUNT III

- 1.-18. Plaintiff herein realleges the allegations of Paragraphs 1 through 18 of Count I.
- 19. Defendant labor union organizations Teamsters International, Local 705, and all other local affiliates of

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Teamsters International owe a statutory duty of fair representation to Plaintiff, and all other members of the class he represents, as union members, pursuant to Section 9(a) of the NLRA, 29 U.S.C. Section 159(a).

- 20. By themselves and by means of the acts of their officers and other agents, Defendant labor union organizations Teamsters International, Local 705, and all other local affiliates of Teamsters International have breached their statutory duty of fair representation through the misrepresentation of certain material facts and the omission to state other material facts relating to the value of a Teamster union member's participating interest in his local Teamster affiliate or Teamsters International pension fund, which conduct by the Defendant labor union organizations toward the Plaintiff, and all other members of the class he represents, is unreasonable, arbitrary, discriminatory, and/or in bad faith.
- 21. By themselves and by means of the acts of their officers and other agents, Defendant labor union organizations Teamsters International, Local 705, and all other local affiliates of Teamsters International have breached their statutory duty of fair representation through the establishment and use of:
  - a) Arbitrary and unreasonable actuarial bases for the determination of benefits to a Teamster union member from a local Teamster affiliate or Teamsters International pension fund;
  - Arbitrary and unreasonable length requirements as part of the vesting provisions of local Teamster affiliate or Teamsters International pension plans;
     and
  - (c) Arbitrary and unreasonable continuity requirements as part of the vesting provisions of local

Teamster affiliate or Teamsters International pension plans,

which conduct by the Defendant labor union organizations toward the Plaintiff, and all other members of the class he represents, is unreasonable, arbitrary, discriminatory and/or in bad faith.

- 22. By themselves and by means of the acts of their officers and other agents, Defendant labor union organizations Teamsters International, Local 705, and all other local affiliates of Teamsters International have breached their statutory duty of fair representation through their diversion of, or their acquiescence in the diversion by others of, funds held in trust for local Teamster affiliate or Teamsters International pension funds from their lawful purposes and to the benefit of Defendants or to the benefit of others, or to enhance Defendants' position, status, or prestige, or to enhance the position, status or prestige of others, which conduct toward the Plaintiff, and all other members of the class he represents is unreasonable, arbitrary, discriminatory and/or in bad faith.
- 23. As a direct and proximate result of Defendant labor union organizations' Teamsters International, Local 705, and all other local affiliates of Teamsters International, breach of their statutory duty of fair representation, Plaintiff and all other members of the class he represents have sustained substantial loss and injury.

### PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

 Make a determination that the named Plaintiff represents all other Teamster union members in the United States as a class as heretofore alleged;

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- b) Find that Defendants International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization, and Local 705 International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization, by themselves and as representatives of the class of all local Teamster affiliate unions similarly situated, have breached their statutory duty of fair representation to Plaintiff and have thereby violated Section 9(a) of the National Labor Relations Act, 29 U. S. C. Section 159 (a).
- c) Order that all pension fund agreements of the Teamsters International and all local Teamster affiliate unions be reformed by deleting therefrom all arbitrary length and continuity requirements of all vesting provisions in such pension fund agreements;
- d) Enter judgment against the Defendants International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization and Local 705 International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization, by themselves and as representatives of the class of all local Teamster affiliate unions similarly situated, in an amount equal to all pension benefits unlawfully denied Plaintiff and all other members of the class he represents, with interest thereon;
- e) Enter judgment against the Defendants International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization, and Local 705 International

Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization, by themselves, and as representatives of the class of all local Teamster affiliate unions similarly situated, in an amount equal to all those funds held in trust for local Teamster affiliate or Teamsters International pension funds which have been unlawfully diverted from their proper purposes; and

f) Grant such other and further relief as this Court deems to be fair and equitable under the circumstances.

### COUNT IV

1.-18. Plaintiff herein realleges the allegations of Paragraphs 1 through 18 of Count I.

19. The misrepresentations of certain material facts and the omission to state other material facts relating to the value of a Teamster union member's participating interest in his local Teamster affiliate or Teamsters International pension fund by Defendants International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization, and Local 705 International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization, by themselves and as representatives of the class of all local Teamster affiliate unions similarly situated; and Louis Peick, by himself and as representative of all Trustees of all Teamsters pension funds and as representative of all Officers of all Teamsters unions similarly situated, constitute fraud and deceit and, as a direct and proximate result thereof, Plaintiff and all other members of the class he represents have sustained substantial loss and injury.

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### PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

- a) Make a determination that the named Plaintiff represents all other Teamster union members in the United States as a class as heretofore alleged;
- b) Order that all pension fund agreements of the Teamsters International and all local Teamster affiliate unions be reformed by deleting therefrom all arbitrary length and continuity requirements of all vesting provisions in such pension fund agreements;
- c) Enter judgment against the Defendants in an amount equal to all pension benefits unlawfully denied Plaintiff and all other members of the class he represents, with interest thereon, and
- d) Enter judgment against the Defendants in an amount equal to all those funds held in trust for local Teamster affiliate or Teamsters International pension funds which have been unlawfully diverted from their proper purposes; and
- e) Grant such other and further relief as this Court deems to be fair and equitable under the circumstances.

### COUNT V

1.-18. Plaintiff herein realleges the allegations of Paragraphs 1 through 18 of Count 1.

19. Defendant labor union organizations Teamsters International, Local 705, and all other local affiliates of Teamsters International are the exclusive representatives of Plaintiff, and all other members of the class he represents, for the purposes of collective bargaining with each of the various employers of Plaintiff and all other mem-

bers of the class he represents. Accordingly, Plaintiff and all other members of the class he represents have placed their trust and confidence in the Defendant labor union organizations to establish and construct in their collective bargaining negotiations with the various employers of Plaintiff, and all other members of the class he represents, fair and reasonable pension fund plans. As the exclusive representatives of Plaintiff and all other members of the class he represents, Defendant labor union organizations Teamsters International, Local 705, and all other local affiliates of Teamsters International, thus owe a fiduciary duty to Plaintiff and all other members of the class he represents.

- 20. Defendant Peick and all other Trustees of all Teamster pension funds administer such pension funds under trust agreements and pursuant to statutory requirements, including the requirement that such pension trusts be for the sole and exclusive benefit of the employees. Section 305(5) of the NLRA, 29 U.S.C. Section 186(5). As trustees for Plaintiff and all other members of the class he represents (which members are the employees and beneficiaries of such pension trusts), Defendant Peick and all other Trustees of all Teamster pension funds owe a fiduciary duty to Plaintiff and all other members of the class he represents.
- 21. Defendant labor union organizations Teamsters International, Local 705, and all other local affiliates of Teamsters International and Defendant Peick and all other Trustees of all Teamster pension funds have breached the fiduciary duty which they owe to Plaintiff and all other members of the class he represents through the establishment and use of:
  - a) Arbitrary and unreasonable actuarial bases for the determination of benefits to a Teamster union mem-

### Complaint

ber from a local Teamster affiliate or Teamsters International pension fund;

- Arbitrary and unreasonable length requirements as part of the vesting provisions of local Teamster affiliate or Teamsters International pension plans; and
- Arbitrary and unreasonable continuity requirements as part of the vesting provisions of local Teamster affiliate or Teamsters International pension plans,

which conduct by the Defendant labor union organizations and the Defendant Trustees toward the Plaintiff, and all other members of the class he represents, is unreasonable, arbitrary, discriminatory, and/or in bad faith.

- 22. Defendant labor union organizations Teamsters International, Local 705, and all other local affiliates of Teamsters International and Defendant Peick and all other Trustees of all Teamster pension funds have breached the fiduciary duty which they owe to Plaintiff, and all other members of the class he represents, through their diversion of, or their acquiescense in the diversion by others of, funds held in trust for local Teamster affiliate or Teamsters International pension funds from their lawful purpose and to the benefit of Defendants or to the benefit of others or to enhance Defendants' own position, status, or prestige, or to enhance the position, status or prestige of others.
- 23. As a direct and proximate result of Defendant labor union organizations Teamsters International, Local 705, and all other local affiliates of Teamsters International and Defendant Peick and all other Trustees of all Teamster pension funds, breach of their fiduciary duty, Plaintiff and

all other members of the class he represents have sustained substantial loss and injury.

### PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

- a) Make a determination that the named Plaintiff represents all other Teamster union members in the United States as a class as heretofore alleged;
- b) Find that Defendants International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization, and Local 705 International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization, by themselves and as representatives of the class of all local Teamster affiliate unions similarly situated, and Defendant Louis Peick, by himself and as representative of all Trustees of all Teamster pension funds, have breached their fiduciary duty which they owe to Plaintiff, and all other members of the class he represents;
- c) Order that all pension fund agreements of the Teamsters International and all local Teamster affiliate unions be reformed by deleting therefrom all arbitrary length and continuity requirements of all vesting provisions in such pension fund agreements;
- d) Enter judgment against the Defendants International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization, and Local 705 International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organi-

### Complaint

zation, by themselves and as representatives of the class of all local Teamster affiliate unions similarly situated, and Defendant Peick, by himself and as representative of all Trustees of all Teamster pension funds, in an amount equal to all pension benefits unlawfully denied Plaintiff and all other members of the class he represents, with interest thereon;

- e) Enter judgment against the Defendants International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization, and Local 705 International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization, by themselves and as representatives of the class of all local Teamster affiliate unions similarly situated, and Defendant Peick, by himself and as representative of all Trustees of all Teamster pension funds, in an amount equal to all those funds held in trust for local Teamster affiliate or Teamsters International pension funds which have been unlawfully diverted from their proper purposes; and
- f) Grant such other and further relief as this Court deems to be fair and equitable under the circumstances.

Respectfully submitted,

/8/ PETER J. BARACK PETER J. BARACK

LAWRENCE WALNER

LAWRENCE WALNER & ASSOCIATES, LTD. 221 North LaSalle Street Chicago, Illinois 60601 (312) 332-6576

OF COUNSEL:

Peter J. Barack, Esq. 357 East Chicago Avenue Chicago, Illinois 60611 (312) 649-8372

PLAINTIFF HEREBY DEMANDS TRIAL BY JURY.

LAWRENCE WALNER 10/4/74

### Motion of Defendants Local 705, etc., and Louis F. Peick to Dismiss Complaint

IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

Case No. 74 C 2865

JOHN DANIEL,

Plaintiff,

-v.-

LOCAL 705, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and Louis F. Peick, individually,

Defendants.

MOTION OF DEFENDANTS LOCAL 705,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA AND
LOUIS F. PEICK TO DISMISS THE COMPLAINT

Come now defendants Local 705, International Brother-hood of Teamsters, Chauffeurs, Warehousemen and Helpers of America ("Local 705") and Louis F. Peick, individually, by Sherman Carmell, one of their attorneys, and pursuant to Rule 12(b) FRCP state:

- 1. With respect to the allegations contained in Counts I-III, inclusive, of the complaint:
- (a) This court does not have subject matter jurisdiction, and the complaint does not state a claim upon which relief

### Motion of Defendants Local 705, etc., and Louis F. Peick to Dismiss Complaint

can be granted, under either §17(a) of the Securities Act of 1933, 15 USC §77q, or §10(b) of the Securities Exchange Act of 1934, 15 USC 78j(b), as more fully appears from the complaint, the affidavit of Louis F. Peick and the exhibits attached and incorporated for all paragraphs herein as Exhibit 1 and 1A-I.

- (b) The action is barred by the limitations provision of the Securities Act of 1933 and the Illinois Statute of Limitations.
- (c) The complaint challenges alleged misrepresentations concerning an eligibility rule for pension benefits made and enforced by the Local 705 International Brotherhood of Teamsters Pension Fund ("Local 705 Pension Fund"); Board of Trustees of the Local 705 Pension Fund ("Local 705 Trustees") are indispensable parties; and Louis F. Peick is not representative of the Local 705 Trustees.
- (d) International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the "International Union"), Local 705, and other local unions affiliated with the International Union, or any pension fund other than the Local 705 Pension Fund, are not proper parties defendant; and the defendants are not representative of any other person or defendant within the meaning of Rule 23.2.
- (e) The plaintiff has not established the prerequisites for a class or representative action under Rules 23 and 23.2 FRCP.
- 2. In addition to the reasons stated in paragraph 1 of this motion, with respect to the allegations contained in Count III of the complaint concerning the breach of the duty of fair representation, the court lacks subject matter

### Motion of Defendants Local 705, etc., and Louis F. Peick to Dismiss Complaint

jurisdiction and the complaint does not state a claim upon which relief can be granted because:

- (a) The plaintiff is a member only of Local 705; therefore, the claimed duty can run only from Local 705 to the plaintiff.
- (b) The eligibility rule and alleged misrepresentations which the plaintiff challenges did not arise out of the relationship between a union and its member under §9(a) of the National Labor Relations Act, 29 USC §159(a).
- (c) The plaintiff has failed to allege that he has exhausted his intra-union remedies.
- (d) This court does not have subject matter jurisdiction under §301(a) of the National Labor Relations Act, 29 USC §185(a).
- 3. In addition to the reasons stated in paragraph 1 of this motion, with respect to the allegations in Count V of the complaint concerning violation of the "sole and exclusive benefit" of employees provision of §302(c)(5) of the National Labor Relations Act, 29 USC §186(c)(5).
- (a) This court does not have in personam or subject matter jurisdiction because the Local 705 Pension Fund, which promulgated and enforced the challenged eligibility rule, is the only proper party defendant, and the trustees are indispensable parties.
- (b) The plaintiff's action is barred by the Illinois Statute of Limitations.
- (c) The plaintiff is estopped from benefiting from a challenge to the service rule or the alleged representations where he made no attempt for 13 years to request that the Local 705 Trustees waive or cure the break in service and contributions or to challenge the representations.

### Motion Defendants Local 705, etc., and Louis F. Peick to Dismiss Complaint

- (d) The Internal Revenue Service has exclusive subject matter jurisdiction over the matters alleged in the complaint; has ruled contrary to the plaintiff's allegations; and the plaintiff has not exhausted his administrative remedies.
- (e) This court does not have subject matter jurisdiction and the complaint does not state a claim upon which relief can be granted under §302(e)(5) The relief sought exceeds that permitted by §302(e), 29 USC §186(e).
- 4. Count IV does not state a claim upon which relief can be granted and the court does not have subject matter.

WHEREFORE, these defendants pray that the complaint be dismissed and for their costs.

/s/ Sherman Carmell, Sherman Carmell, one of the defendants' attorneys

CARMELL & CHARONE, LTD. 29 So. LaSalle Street Chicago, Illinois 60603 236-8033

Dated:

FILED Nov. 22, 1974 STUART CUNNINGHAM CLERK

### Exhibit 1

STATE OF ILLINOIS, COUNTY OF COOK, SS.:



### AFFIDAVIT OF LOUIS F. PEICK

Louis F. Peick, being first duly sworn, says that if called as a witness, I could competently testify as follows:

1. I am a resident and citizen of the State of Illinois. I am Secretary-Treasurer of Local 705, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America ("Local 705"). I am the Administrator, a trustee, and Secretary-Treasurer of the Local 705 International Brotherhood of Teamsters Pension Fund ("Local 705 Pension Fund"), a trust, with its principal office in Chicago. The facts contained in this affidavit are based on my personal knowledge or the books and records of Local 705 or the Local 705 Pension Fund maintained in the ordinary course of business under my supervision and control. I hold no office in any local union affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America ("International Union") except Local 705. I hold no position as trustee or otherwise with any pension fund except the Local 705 Pension Fund.

### LOCAL 705 PENSION FUND

2. The Local 705 Pension Fund is a trust fund with its office in Chicago. The Local 705 Pension Fund was created as of January 1, 1955 through the process of collective bargaining between multi employer bargaining associations and Local 705 as the collective bargaining representative of certain employees of employer-members of the associations. The collective bargaining agreement creating the Local 705 Pension Fund provided, as pertinent:

"Commencing with January 1, 1955, the Employer shall pay the sum of 5 cents for each hour of employment by each employee into a trust fund for the purpose of providing pension benefits to employees covered by this agreement. A Board of Trustees, in consultation with actuaries and/or pension specialists shall administer such fund and shall decide upon the type and nature of pension plan (including eligibility, benefits, etc.) to be instituted."

- 3. As provided in that collective bargaining agreement, Local 705 and the employers' representatives signed an Agreement And Declaration Of Trust (the "trust agreement"), a copy of which is attached and incorporated as Exhibit 1A. Local 705 appointed the original three employee trustees. The trust agreement was later amended (the "amended trust agreement"), a copy of which is attached as Exhibit 1B. The preamble to, and Article 2, Section 2 of, the amended trust agreement were amended to increase the Board of Trustees ("Local 705 Trustees") to the present eight members by adding an additional union trustee and employer trustee. At all times the union trustees were appointed by Local 705 as provided in Article 2, Section 2 of the trust agreement and the amended trust agreement.
- 4. As provided in Article 7 of the trust agreement, the Local 705 Trustees, at meetings held on February 14, 1955 and April 4, 1955, passed eligibility rules for receipt of a normal retirement pension, including the "20 years of service" rule (the "service rule"). On April 22, 1955 Local 705 sent a letter to its members notifying them of this eligibility requirement, a copy of which is attached and incorporated as Exhibit 1C. In 1958 the Local 705 Pension Fund prepared and mailed to participating employees a

### Affidavit of Louis F. Peick

booklet containing the pension plan rules and regulations, including the service rule, a copy of which is attached and incorporated as Exhibit 1D. Other booklets were prepared and distributed in 1969 and 1973, copies of which are attached and incorporated as Exhibits 1E and 1F, respectively. Since the inception of the Local 705 Pension Fund, the pension plan has contained a service rule for a normal retirement pension benefit identical to the present §2.01(b) and (c) of the 1973 plan (Exhibit 1F).

- 5. On April 20, 1955 the Local 705 Pension Fund received a letter from the United States Treasury Department that its trust and plan met the requirements of Sections 401(c) and 501 of the Internal Revenue Code. Amendments to the pension plan have received similar approval, the latest being a letter dated July 23, 1974 relating to the 1973 plan (Exhibit 1F), a copy of which is attached and incorporated as Exhibit 1G.
- 6. On May 19, 1971, the Local 705 Trustees, after consultation with the actuary, enacted new pension benefits including a vested pension benefit effective July 1, 1971, as shown by the following portion of the minutes of that meeting:

### "4. Vesting (Effective 7/1/71)

An employee who has attained the years of service for a normal pension but not the age, and who leaves the craft, shall be vested with a monthly pension benefit of \$250.00 payable commencing the first month after attaining age 65. Upon the death of the employee before or after attaining 65, no Death benefits or benefit for surviving spouse or dependent children shall be payable."

"The above changes are to be considered as the substantive intent of the board of trustees, and the board reserves the right to formally draft the amendments and to promulgate rules and regulations to implement the amendments. The Board instructed Carmell & Charone, together with the actuary, to prepare and submit amendments to the Internal Revenue Service."

On or about June 11, 1971, the Local 705 Pension Fund notified the participating employees of the changes, including the vested pension benefit, a copy of which is attached and incorporated as Exhibit 1H. The amendments were drafted and later codified in the 1973 plan booklet which began with the following explanation (p. 2):

"Vested pension.

If you leave covered employment before age 57, but after 20 years of service, and do not work in the craft afterwards, you are entitled to a vested pension of:

\$250 a month

when you reach 65. To collect your pension, ask the administrator for a pension eligibility notice when you leave. Then, no sooner than six months before your 65th birthday, send in your application and your eligibility notice. Monthly payments will start after age 65 and after the trustees have your application. Anyone who fails to apply before age 70 loses his pension rights. See official pension plan 2.03.

If you receive a vested pension, you do not qualify for survivor protection or other local 705 post-retirement benefits."

The formal plan amendment relating to the vested pension benefit was codified in §§2.03 and 3.03 of the 1973 plan. The service rule remained the same. The 1973 plan

### Affidavit of Louis F. Peick

booklet was submitted to the Internal Revenue Service together with an actuarial report and subsequent amendments, as more fully appears from a copy of the March 18, 1974 letter from counsel attached and incorporated as Exhibit 1I. As noted before, the 1973 plan, as amended, was approved by the Internal Revenue Service on July 23, 1974.

7. The Local 705 Pension Fund has filed with the United States Department of Labor Forms D-1 and D1-A which contained copies of the various pension plan booklets and amendments as required by the Welfare and Pension Plan Disclosure Act, which were available for inspection and copying.

### JOHN DANIEL APPLICATION TO THE LOCAL 705 PENSION FUND

8. In 1973, John Daniel made an inquiry to the Local 705 Pension Fund concerning eligibility for either a normal retirement pension or a vested pension and was advised that he did not have the required years of service. He then requested a review. The request was referred to the Local 705 Trustees under Section 5.02 of the 1973 pension plan (Exhibit 1F). On December 26, 1973 John Daniel appeared before the Local 705 Trustees, who were and are:

UNION TRUSTEES

Frank Kratky

(President- Local 705)

Louis F. Peick

(Secretary-Treasurer-

Local 705)

Bruno Fillipini (Trustee—Local 705)

P. W. Janopoulos (Bus. Rep.--Local 705) EMPLOYER TRUSTEES

W. Eugene McCarron

-Chairman

Ralph A. Niedert

Frank Bridge

M. J. Siewert, Jr.

The minutes of that meeting, as regards, John Daniel, state:

John Daniel requested that the trustees cure a break in service to make him eligible for pension benefits. The fund records show that Mr. Daniel entered covered employment in April 1950 upon transfer from Local 777. He had a break in service and contributions between December 5, 1960 and July 5, 1961, and is now age 63; therefore, he has 12 years and 5 months of consecutive years of service and contributions since July 5, 1961. In accordance with the plan, and upon motion duly made and seconded, the request was denied.

Mr. Daniel was notified personally and in writing of the decision of the Local 705 Trustees. Thereafter, Mr. Daniel requested an opportunity to again appear before the Local 705 Trustees to ask that they reconsider the December 26, 1973 decision. The request was granted and on March 28, 1974, Mr. Daniel appeared before the same Local 705 Trustees and again requested that he be granted a pension benefit. As shown by the minutes of that meeting:

Mr. Daniel appeared before the board to request a reconsideration of its December 26, 1973 denial to waive a break in service and contributions between December 5, 1960 and July 5, 1961. Mr. Daniel said that the break was only four months because he had returned to work in December, 1960, worked four months, but the employer's bookkeeper did not make the proper payments, and that the company is out of business and there were no records available. Mr. Daniel admitted that he had at least four months break in service and contributions. Although Mr. Daniel claimed that he had returned to work earlier than July 5, 1961, the records do not indicate that any contributions were

### Affidavit of Louis F. Peick

received on his behalf or that he returned his with-drawal card to Local 705 as an indication that he was not working for a contributing employer. The chairman noted that there has been no new evidence presented which had not been considered by the board previously, and upon motion duly made and seconded, the board reaffirmed its denial of December 26, 1973,

### LOCAL 705

9. Local 705 is a voluntary unincorporated labor organization with its principal office in Chicago. In the Chicago Metropolitan area there are approximately 27 local unions chartered by and affiliated with the International Union, including Local 705, and I believe that throughout the United States and Canada there are over 700-800 other such local unions. The Local 705 officers and executive board members, individually and collectively, do not participate as officers, executive board members, appointed or elected business representatives, or members, in the direction and control of any of the local unions except Local 705.

### JOHN DANIEL'S COMPLAINT

- 10. I have read the complaint filed by John Daniel in the United States District Court for the Northern District of Illinois, Eastern Division, Case No. 74 C 2865, and state:
- (a) With respect to ¶7 of the complaint, the service rule complained of by John Daniel, which is the same for a normal retirement pension and a vested pension, was created and applied only by the Local 705 Pension Fund. Local 705 does not provide a pension benefit and John Daniel has not requested any benefit from it. The following allegation is untrue:

"Moreover, on information and belief, TEAMSTERS INTERNATIONAL also assist Local 705... in the investment and management of monies held in Trust by the pension plans of all such local Teamster affiliates."

Local 705 does not hold or manage any of the employer pension fund contributions made on behalf of participating employees. All such contributions are made to and held by the Local 705 Pension Fund in accordance with the trust agreements and the collective bargaining agreements. The International Union has not and does not participate, assist, directly or indirectly, in the investment or management of any funds held by the Local 705 Pension Fund. At the time John Daniel made his application to the Local 705 Pension Fund, and as of December 6, 1973 and March 28, 1974, the collective bargaining agreement between John Daniel's employer and Local 705 provided:

### ARTICLE 17

### Pension Trust Fund

Section 1. The Employer for each regular Employee shall pay the sum of nineteen dollars (\$19.00) per week (plus the additional payments provided for in Section 3 hereof) to Local 705 International Brotherhood of Teamsters Pension Trust Fund (Fund), an irrevocable trust heretofore created by an Agreement and Declaration of Trust (Trust Agreement) pursuant to a Collective Bargaining (Cartage) Agreement between certain Employers and the Union. The Fund shall use these payments for purposes permitted under the Trust Agreement and to provide pension, death and such other benefits as permitted by said Trust Agreement, as amended, from time to time, and by Section 302(e) of the Labor-Management and Relations Act of 1947. The Trustees of the Fund shall have the sole power (a) to construe the provisions of the Trust Agreement and rules and regulations and all terms used therein, and (b) to determine all disputes with respect to eligibility, the right to participate in benefits of the Fund, time, method of payment, payment

### Affidavit of Louis F. Peick

during periods of Employee illness or disability, methods of enforcement of payment and related matters, and any construction adopted and any determination made by the Trustees in good faith shall be final and binding upon all Employers, Employees, participants, legal representatives, dependents, relatives and all persons and parties.

11. The enactment and maintenance of the service rule, the denial of John Daniel's application for a normal retirement or vested pension benefit, and all other actions involving the Local 705 Pension Fund, were performed and taken only by the Local 705 Trustees, and not by the International Union, Local 705, any other local union affiliated with the International Union, any other person, or ratified by anyone else. Therefore, the statements contained in ¶10 of the complaint are not correct.

12. John Daniel transferred into employment covered by the Local 705 Pension Fund in April 1950. Employer contributions to the Local 705 Pension Fund began in January 1955 when the fund was created. However, the Local 705 Prustees granted past unfunded service credit for years prior to January 1, 1955 for all employees, including John Daniel, who were employed by an employer under contract with Local 705. Therefore, contrary to the statement n \$16\$ of the complaint, no contributions were received by the Local 705 Pension Fund on behalf of John Daniel between April 1950 and January 1955.

/s/ Louis F. Peick Louis F. Peick

Subscribed and sworn to before me this 22nd (ay of October, 1974.

/s/ FLORENCE UNRATH Notary Public

### Exhibit 1A Local 705 Trust Agreement

(See Opposite) 🐷

# TRUST AGREEMENT

## Creating the Local 705 International Brotherhood of Teamsters (A. F. of L.) Pension Trust

THIS AGREEMENT and Declaration of Trust, made and entered into this

day of

Station and PLATFORM WORKERS' UNION, LOCAL 705, an affiliate of the International Brotherhood of Teamsters, (AFL), an unincorporated association commonly known as a labor organization (hereinafter referred to as the "Union"), by its duly authorized representatives, and the ILLINOIS MOTOR TRUCK OPERATORS ASSOCIATION, CENTRAL MOTOR FREIGHT ASSOCIATION, and CARTAGE EXCHANGE OF CHICAGO, for and on behalf of themselves, their present and future constituent members, and such other Employers who may become parties hereto, (hereinafter collectively referred to as the "Employer"), and the TRUSTEES, (hereinafter referred to as "the Trustees") selected as hereinafter described, who have affixed their respective signatures hereto, accepting the trust obligations herein declared:

## WITNESSETH

WHEREAS, the Union and the Employer believe that it is in the best interest of the employees of such Employer represented by the Union, and the families and dependents of such employees, to provide for retirement benefits and for that purpose to establish a trust fund as hereinafter provided; and

WHEREAS, the Union and the Employer have heretofore entered into a collective bargaining agreement under the terms of which it is provided: "Commencing with January 1, 1955, the Employer shall pay the sum of 5 cents for each hour of employment by each employee into a trust fund for the purpose of providing pension benefits to employees covered by this agreement. A Board of Trustees, in consultation with actuaries and or pension specialists shall administer such fund and shall decide upon the type and nature of pension plan (including eligibility benefits, etc.) to be instituted"; and WHEREAS, H. E. WOOD, LOUIS F. PEICK and FRED TIEDT, Trustees, have been designated as the original Trustees to represent the Union in accordance with the provisions of this agreement, and JOHN VIKING. THOMAS O. SMITH and GEORGE W. JOHNSON have been designated to represent the Employer as the original Trustees of the Trust in accordance with the provisions of this

NOW, THEREFORE, for and in consideration of the premises and of the mutual covenants and agreements herein contained, the Union and the Employer hereby accept and adopt all of the provisions herein contained and the Trustees declare that they will receive and hold the contributions and any other money or property which may come into their hands as Trustees (all such contributions, money and property being hereinafter referred to as "the Trust Fund"), with the powers and duties, uses and purposes as hereinafter set forth, to wit:

### ARTICLE 1

## Definition of Term

SECTION 1. Employer—The term "Employer" as used herein shall mean any association or individual employer who has duly executed a collective bargaining agreement with the Union, or any employer not presently a party to such collective bargaining agreement who satisfies the requirements for participation as established by the Trustees and agrees to be bound by this Agree-

SECTION 2. Union—The term "Union" as used herein shall mean TRUCK DRIVERS, OIL DRIVERS, FILLING STATION and PLATFORM WORKERS' UNION, LOCAL 705, an affiliate of the International Brotherhood of Teamsters, (AFL).

SECTION 3. Employees-The term "Employees" as used herein shall include

- a. A person working within the jurisdiction of the Union for an employer, as hereinbefore defined, and on whose behalf payments shall be made to the FUND by the employer; or
  - b. All persons employed by the Union upon being proposed by the Union and after acceptance by the Trustees, and as to such Union personnel the Union shall be considered an employer within the meaning of this agreement and declaration of Trust and shall, on behalf of such personnel, make payments to the TRUST at the times and at the rate of payment equal to that made by any other employer who is a party to the TRUST, or
- c. All persons employed by the TRUST upon acceptance by the TRUS-TEES, and as to such TRUST personnel the TRUSTEES shall be deemed an employer within the meaning of this agreement and declaration of TRUST and shall, on behalf of such personnel, make payments to the TRUST at the times and at the rate of payment equal to that made by any other employer who is a party to the TRUST.

SECTION 4. Trustees—The term "Trustees" as used herein shall mean the Trustees designated in this Agreement and Declaration of Trust together with their successors designated and appointed in accordance with the terms of this Agreement.

SECTION 5. Trust Fund-The term "Trust Fund" shall refer to all property of whatever nature which shall be in said Trust.

SECTION 6. Employer Contributions—The term "Employer Contributions" as used herein shall mean payments made by Employers to the Trust Fund herein created.

SECTION 7. Military Service of the United States—The term "Military Service of the United States" shall refer to active service in the Armed Forces of the United States, including active service in the Regular or Reserve components of the Army, Navy, Marine Corps, Air Force, Coast Guard and United States Merchant Marine.

SECTION 8. Period of National Emergency—The term "period of National Emergency" shall include any period during which the United States is at war with another Country or during which the President of the United States or the Congress of the United States has declared the United States to be in a National Emergency or state of war or during which the United States is engaged in "police" or other actions pursuant to the United Nations Charter or similar treaties or agreements: and any person serving in the Military Service of the United States by reason of involuntary induction through a Selective Service System or similar system of induction shall be regarded as serving during a period of National emergency.

## ARTICLE 2

# Creation of Trust Fund and Board of Trustees

SECTION 1. Designation—The Union and the Employers hereby create and establish, with the Trustees herein provided for, a Trust, to be known as LOCAL 705 INTERNATIONAL BROTH-ERHOOD OF TEAMSTERS (AFL) PENSION TRUST FUND, which shall be comprised of assets initially derived from Employer contributions made pursuant to the collective bargaining agreement between the parties (plus any additional sum or sums, from Employer contributions which may hereafter be agreed upon by the Employers and the Union and set forth in written collective bargaining agreements), together with all insurance and annuity contracts or other sums payable to the Trustees on account of such insurance and annuity contracts, all investments made and held by the Trustees on account of such insurance and by the Trustees as contributions or as income from investments made and held by the Trustees for the uses, purposes or otherwise, and any other property received and held by the Trustees for the uses, purposes and trusts, set forth in this Agreement and Declaration of Trust where any of the foregoing is derived from the Employer contributions.

SECTION 2. Board of Trustees—There is hereby created a Board of Trustees consisting of three persons representative of the employer. The Employer Trustees shall be designated by the Employers' Associations. The Employee Trustees shall be designated by the Employers' Associations. The Employee Trustees shall be designated by the Union.

SECTION 3. Impartial Trustee—Should a deadlock occur the Trustees shall appoint a neutral person empowered to break such deadlock within a reasonable length of time, failing which, an impartial umpire to decide such dispute, shall on petition of either the Union or the Employer Trustee be appointed by The Honorable Walter J. LaBuy, a Judge of the District Court of the United States in Chicago, as provided by law.

SECTION 4. Vacancies in Board of Trustees—In case of vacancies by death, legal incapacity, resignation or otherwise, of the Employer Trustee or Employee Trustee, a successor thereto shall be appointed as provided in Article II, Section 2, hereof. Any Trustee or Trustees shall have the right to resign upon tendering ten (10) days' written notice to the remaining Trustee or Trustees, to each of the Employers' Associations parties hereto, and to the Union.

SECTION 5. Term of Office—The Trustees shall serve for a term of four (4) years. The officers of the Board of Trustees shall consist of a Chairman and a Secretary-Treasurer. The officers shall be elected in January and they shall serve for one year or until the successors are duly elected and qualified.

SECTION 6. Limitation of Liability of Successor Trustees.—No Successor Trustee shall be liable or responsible for any acts or defaults of any Co-Trustee or Predecessor Trustee, or for any losses or expenses resulting from or occasioned by anything done or neglected to be done in the administration of the Trust Fund prior to his becoming a Trustee, nor be required to inquire into or take any notice of the prior administration of the Trust Fund.

## ARTICLE 3

## Contributions and Collections

SECTION 1. Amount of Contributions—Each employer shall make continuing and prompt pay-ments to the Trust Fund in accordance with the Agreement between the parties as follows:

a. The amount of \$2.00 per employee per week shall be contributed for each employee other than casual or emergency employees, covered under the Collective Bargaining Agreement for any week in which such employee performs any service for the employer, even when such service is not performed under the terms of the Collective Bargaining Agreement.

- fined, for this purpose only, as employees who are not on a seniority list and such payment shall be made for the days actually worked at the rate of forty cents (40c) per day. or emergency employees who are on casual Payment shall be made
- c. The Trustees of the Pension Trust shall take into consideration the prob-lem of unexcused absences in establishing standards for determination of eli-gibility for retirement benefits.
- d. If an employee is absent because of non-occupational illness or injury, the employer shall continue to make the required \$2.00 contribution for a period of four weeks.
- e. If an employee is absent because of occupational illness or injury quired \$2.00 contribution shall be made until the employee returns to for a period of six months whichever is the shorter.
  - f. The obligation to make the above contributions shall continue during periods when the Collective Bargaining Agreement is being negotiated.
- g. All leaves of absence, when granted by the employer, in addition to the requirements of the parties, shall be conditioned upon the employer and the employee making satisfactory arrangements for paying the \$2.00 weekly contribution to the Pension Fund, and at all times the payment shall be made by the employer for the period of such granted leave of absence.

SECTION 2. Time of Payment—The Trustees shall, by regulation, fix the time of payment for contributions and shall send a copy of such regulations to each employer required to contribute.

SECTION 3. Receipt of Payment and Other Property of Trust—The Trustees are hereby designated as the persons to receive the payments heretofore or hereafter made by the Employers to the Trust Fund, and the Trustees are hereby vested with all right, title and interest in and to such moneys and all interest accrued thereon, and are authorized to receive and be paid the same. The Trustees agree to receive all such payments, deposits, moneys, insurance and annuity contracts and other assets and properties described or referred to in Article II and this Article III and to hold the same in Trust hereunder for the uses and purposes of the Trust herein created.

SECTION 4. Collections and Enforcement of Payment—The Trustees, in their fiduciary capacities, shall have the power to demand and collect, the contributions of the Employers to the Fund. Said Board of Trustees shall take such steps, including the institution and prosecution of and intervention in any legal proceeding that may be necessary or desirable to effectuate the collection or preservation of contributions or other amounts which may be owed to the Trust Fund, without prejudice, however, to the rights of the Union to take whatever steps deemed necessary for such purpose.

SECTION 5. Production of Records—Each employer shall promptly furnish to the Trustees, on demand, the names of its employees, their Social Security numbers, the hours worked by each employee and such other information as the Trustees may reasonably require in connection with the administration of the Trust. The Trustees may by their representatives examine the pertinent records of each Employer at the Employer's place of business whenever such examination is deemed necessary or advisable by the Trustees in connection with the proper administration of the Trust. All Employers shall annually furnish to the Trustees, if requested by them, a statement showing whether (a) the Company is a Corporation and the names of all of its officers; (b) if not a corporation, a certificate stating that it is either a partnership or an individual proprietorship and the names of the partners or the name of the individual proprietor.

SECTION 6. Penalties—The Trustees are hereby given the power to require the payment of liquidated damages in an amount to be fixed by the rules and regulations promulgated by them as hereinafter provided, for failure to make prompt payments to the Fund as provided for herein and in the collective bargaining agreement, and are hereby given the power to collect such damages, when assessed, in the same manner as they are given power to collect the contributions.

SECTION 7. Guarantee Deposits—The Trustees are given the power and authority, in their discretion, in appropriate cases, to require Employers, who are not members of any signatory Association, to deposit with the Trustees, in advance, as a guarantee for the payment of monthly contributions, an amount to be determined by the Trustees, as a condition to such Employer's participation herein, and are given the right to require that said guarantee be continuously maintained by such Employer as a condition to the continued participation herein.

### ARTICLE 4

# owers and Duties of Trustees

SECTION 1. The Trustees shall have general supervision of the operation of the Tronduct the business and activities of the Trust according to this Trust Agreement.

SECTION 2. The Trustees shall hold, manage, care for and protect the Trust Fund and collect the income therefrom and contributions thereto.

SECTION 3. The Trustees shall have the power, in their sole discretion, to invest in such securities or other property as shall be permissible investments for Trustees in the State of Illinois, and may sell or otherwise dispose of such bonds or obligations at any time and from time to time as they so see fit; provided, however, the Trustees may, in their discretion, invest the Trust Fund or any part thereof in retirement annuity contracts, annuity contracts, retirement income con-

tracts, group contracts, and such other forms of contracts provided all such contracts are issued by legal reserve life insurance companies authorized to do business in the State of Illinois, as may be selected by the Trustees, for the purpose of providing for all or a part of the benefits provided under this Trust.

SECTION 4. All Trust Funds not invested shall be deposited by the Trustees in such depository or depositories as the Trustees shall from time to time select, and any such deposit or deposits shall be made in the name of the Trust. All such funds shall be disbursed only by check or draft, signed by at least one Trustee representing the employers and one Trustee representing the Employees. No Trustee shall be liable in any manner for the failure of any depository selected by the Trustees, in good faith, and in the exercise of reasonable business judgment.

SECTION 5. The Trustees shall keep true and accurate books of account and a record of all their transactions, meetings, and the actions taken at such meetings or by informal action of the TrusSECTION 6. The Trustees shall procure an audit of the books of the Trust by a Certified Public Accountant not less frequently than once each year and a copy of each such audit shall be furnished to each Trustee, the Employers, and the Union, and a copy of such audit shall be kept available for inspection by authorized persons during business hours at the office of the Trustees. The Trustees, in addition thereto, shall prepare a quarterly financial statement for the parties.

SECTION 7. All checks, drafts, vouchers or other withdrawals of funds from the Trust Fund shall be signed by the Employer Trustee and the Employee Trustee, provided, however, that the Trustees may establish a special bank account of limited amount out of which expenses of operation of the Trust may be paid on the signature of a Trustee or a duly authorized employee of

SECTION 8. The Trustees shall incur no liability in acting upon any instrument, application, notice, request, signed letter, telegram, or other paper or document believed by them to be genuine and to contain a true statement of facts, and to be signed or sent to the proper person.

SECTION 9. Any Trustee may rely upon any instrument in writing purporting to have been signed by a majority of the Trustees as conclusive evidence of the fact that a majority of the Trustees have taken the action stated to have been taken in such instrument.

SECTION 10. No Trustee shall be liable for any action taken or omitted to be taken by him in good faith, nor for the wrongful acts of any agent, employee or attorney selected by the Trustees with reasonable care, nor for any act of commission or omission of any other Trustee.

SECTION 11. The Trustees are hereby authorized to formulate and promulgate any and all necessary rules and regulations which they deem necessary or desirable to facilitate the proper administration of the Trust, provided the same are not inconsistent with the terms of this Agreement. All rules and regulations adopted by majority action of the Trustees for the administration of the Trust Fund shall be binding upon all parties hereto, all parties dealing with the Trust and all persons claiming any benefits hereunder.

SECTION 12. Any successor Trustee appointed in accordance with the provisions of this Agreement, upon accepting in writing the terms of this Trust, shall be vested with all of the rights, powers and duties of his predecessor.

SECTION 13. No party dealing with the Trustees shall be obliged (a) to see the application to the trust purposes herein stated of any money or property belonging to the Trust Fund, or (b) to see that the terms of this Agreement have been complied with, or (c) to inquire into the necessity or expediency of any act of the Trustees. Every instrument executed by the Trustees shall be conclusive evidence in favor of every person relying thereon (a) that at the time of the delivery of accordance with the Trust was in full force and effect, (b) that the instrument was executed in authorized and empowered to execute the instrument.

SECTION 14. The receipt of the Trustees for any money or property or checks, after such checks are honored at the bank and paid to the Trust Fund received by the Trustees shall discharge the person or persons paying or transferring the same.

SECTION 15. The Trustees shall, by regulation, establish rules relating to payments of contri-butions by Employers for employees during periods of such employees' illness or disability and

SECTION 16. The Trustees are hereby empowered, in addition to such other powers as are set forth herein or conferred by law;

- a. To enter into any and all contracts and agreements for carrying out the terms of this Agreement and Declaration of Trust and for the administration of the Trust Funds and to do all acts as they, in their discretion, may deem necessary or advisable, and such contracts and agreements and acts shall be binding and conclusive on the parties hereto and on the employees involved.
  - b. To keep property and securities registered in the name of the Trustees or in the name of a nominee or nominees or in unregistered or bearer form without disclosure of any fiduciary relationship.
    - c. To establish and accumulate as part of the Trust Fund a reserve or reserves, adequate, in the opinion of the Trustees, to carry out the purposes of

d. To pay out of the funds of the Trust all real and personal property taxes, income taxes and other taxes of any and all kinds levied or assessed under existing or future laws upon or in respect to the Trust Fund or any money, property or securities forming a part thereof.

e. To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder.

SECTION 17. The Trustees shall use and apply the Trust Fund for the following purposes:

a. To pay or provide for the payment of all reasonable and necessary expenses of collecting the contributions and administering the affairs of this Trust, including the employment of such administrative, legal, actuarial, expert and clerical assistance, as may be reasonably necessary, the leasing of such premises as may be necessary for the operation of the affairs of the Trust, and the purchase or leasing of such materials, supplies and equipment as the Trustees, in their discretion, find necessary or appropriate to the performance of their duties. b. To pay or provide for the payments of retirement benefits to eligible Employees in accordance with the terms, provisions and conditions of the pension plan to be formulated and agreed upon hereunder by the Trustees.

SECTION 18. The Trustees, by majority action, shall have the power to construe the provisions of this Agreement and the terms and regulations of the pension plan, and any construction adopted by the Trustees in good faith shall be binding upon the Union, Employees and Employ-

SECTION 19. The Trustees, by resolution, shall provide for fidelity bonds, in such amounts as they may determine, for their employees and for the Trustees who shall be authorized to withdraw from the Trust.

### ARTICLE S

# and Disputes

SECTION 1. In any controversy, claim, demand, suit at law, or other proceeding between any member, beneficiary, or any other person and the Trustees, the Trustee shall be entitled to rely upon any facts appearing in the records of the Trustees, any instruments on file with the Trustees, with the Union or with the Employers, any facts certified to the Trustees by the Union or the Union or with the Employers, any facts certified to the Trustees by the Union or the Employers, any facts which are of public record, and any other evidence pertinent to the is-

SECTION 2. All questions or controversies, of whatsoever character, arising in any manner or between any parties or persons in connection with the Trust Fund or the operation thereof, whether er as to any claim for any benefits preferred by any member, or any other person, or whether as to the construction of the language or meaning of the rules and regulations adopted by the Trustees or this instrument, or as to any writing, decision, instrument or accounts in connection with the operation of the Trust Fund or otherwise, shall be submitted to the Board of Trustees for decision, and the decision of a majority of the Board, if made in good faith, shall be binding upon all persons dealing with the Trust Fund or claiming any benefit thereunder.

SECTION 3. The Trustees may, in their sole discretion, compromise or settle any claim or controversy in such manner as they think best, and any majority decision made by the Board of Trustees in compromise or settlement of a claim or controversy, or any compromise or settlement agreement entered into by the Trustees, shall be conclusive and binding on all Parties interested in this Trust.

### ARTICLE 6

# of Board of Trustees

SECTION 1. Officers—The officers of the Board of Trustees shall consist of a chairman and a secretary-treasurer. The officers shall be elected in January and they shall serve for one year or until their successors are duly elected and qualify.

SECTION 2. Quorum—A quorum of the Trustees for the transaction of business, except as otherwise specifically provided herein, shall consist of at least two Trustees, one of whom shall be representative of the Employees. It is the intention of the parties that at any time any vote or other action is taken by the Board of Trustees, that the number of Union Trustees and Employer Trustees qualified to act, vote and constitute a quorum shall always be equal.

SECTION 3. Power to Act in Case of Vacancy—No vacancy or vacancies in the Board of Trustees shall impair the power of the remaining Trustees, acting in the manner provided by this Agreement, to administer the affairs of the Trust notwithstanding the existence of such vacancy or vacancies.

SECTION 4. Expenses—All proper and necessary expenses incurred by any Trustee shall be paid for from the funds of the Trust Fund.

SECTION 5. Meetings—A regular annual meeting of the Trustees shall be held during the month of January each year at a date fixed by the Trustees. The Chairman, the Secretary-Treasurer, or any two Trustees, may call a meeting of the Trustees at any time by giving at least five (5) days written notice of the time and place thereof to each Trustee. There shall also be meetings at not

A meeting so called shall be adjourned for a reasonable period upon the request of any Trustee showing a justifiable cause therefor to the Trustees. Meetings of the Trustees may also be held at any time without notice if all the Trustees consent thereto. In the event that the Trustees shall concur in writing upon any proposition no meeting thereon need be held by the Trustees. The vote of the Trustees may be cast by them in person at a meeting or may be evidenced by written instruments signed by them.

### ARTICLE 7

# Establishment of Pension Plan

SECTION 1. Formulation of Plan—Employer Trustee and Employee Trustee, together with the Impartial Trustee, shall formulate a plan for the payment of such retirement pension benefits, permanent disability pension benefits and death benefits as feasible and shall begin active operation of such plan as soon as possible. Said Trustees shall draft procedures, regulations and conditions for the operation of the plan, including by way of illustration and not limitation: Conditions of eligibility for covered employees, procedure for claiming benefits, schedules of type and amount of benefits to be paid, and procedure for the distribution of benefits.

operation SECTION 2. Assistance for Drafting Plan-The Trustees may consult with or employ such tuarial and other experts as they deem necessary for the proper formulation and operation said pension plan.

SECTION 3. Copies of Plan & Notice—A copy of such pension plan shall be adopted and filed by the Trustees as part of the records and minutes of the Trustees and one (1) copy of such plan shall be distributed to the Union and to each employer.

Agreement. A copy of each amendments comply with the purposes as set forth in this Trust tees as part of the records and minutes of the Trustees and one copy thereof shall be distributed to the union and to each employer, or employer signatories to this trust agreement. Amendment of Plan-The pension plan may be amended by the Trustees from time SECTION 4.

### ARTICLE 8

# Spenditeift Claus

SECTION 1. All benefit payments to employees, if and when such payments shall become due, shall, except as to persons under legal disability, be paid to such employees in person and shall not be liable or taken for any obligation of such employees.

# ARTICLE 9

# Payments to Persons Under Legal Disability

SECTION 1. In case any benefit payments hereunder become payable to a person under legal disability, or to a person not adjudicated incompetent but, by reason of mental or physical disability, in the opinion of the Trustets, is unable to administer properly such payments, then such payments may be paid out by the Trustees for the benefit of such person in such of the following ways as they think best, and the Trustees shall have no duty or obligation to see that the Funds are used or applied for the purpose or purposes for which paid:

- a. directly to any such person;
- b. to the legally appointed guardian or conservator of such person;
- c. to any spouse, parent, brother or sister of such person for his support and maintenance;
  - d. by the Trustees using such payments directly for the support, maintenance and welfare of any such person.

# ARTICLE 10

# Amendment of Agreement

It is anticipated that in the administration of this Trust, conditions may arise that are not foreseen at the time of the execution of this Agreement, and it is the intention of the parties that the power of amendment, which is hereinafter given, be exercised in order to carry out the provisions of this Trust, among which is to pay the largest benefits possible which are consistent with the number of members becoming and likely to become eligible for such payments, the amount of funds which are available and which will probably become available, and the following of sound actuarial practice. Therefore, the power is given to the Trustees to amend this Agreement by majority vote, at any time and from time to time, and all parties to the Trust and all persons claiming an interest thereunder shall be bound thereby, and no member, employee member, beneficiary or any other person shall have any vested interest or right in the Trust Fund or in any payment from the Trust Fund, and the Trustees have full authority to amend, repeal, add to, or take away any right or payment retroactive or otherwise that they deem proper for the preservation of this Trust; providing, however, in no event shall the Trust Fund be used for any other purpose other than the purpose set forth in this Trust Agreement, and for the purposes of paying the necessary expenses incurred in the administration of this Trust.

SECTION 1. This Trust shall cease and terminate upon the happening of any one or the following events:

a. In the event the Trust Fund shall be, in the opinion of the Trustees, in-adequate to carry out the intent and purpose of this Agreement, or to meet the payments due or to become due under this Agreement to persons already drawing benefits.

b. In the event there are no individuals living who can qualify as employees

Trust shall terminate for any of the reasons set forth in Section Trustees shall distribute the Trust Fund in the following ION 2. In the event this of this Article 11 hereof, SECTION

a. The Trustees shall, to the extent permitted by the Trust Fund, pay over and distribute to such employees as are receiving retirement benefits under the provisions of this Agreement, the sum equal to the actuarial value of unpaid benefits computed in accordance with the Carlisle Table of Mortality. In the event the Trust Fund is inadequate to make such payments in full, all such payments shall be decreased proportionately to the end that all such employees shall receive pro rata payments.

b. In the event there are any moneys remaining in the Trust Fund after the payments provided for in subsection a of this Section, then in that event such moneys shall forthwith be distributed to all employees who have been employed for at least fifteen (15) years, in equal shares.

SECTION 3. In the event the Trust hereby created is subject to the Rule against Perpetuities as existing in the law of the State of Illinois at the time in this sentence fixed for termination of the Trust, the Trust shall terminate twenty (20) years after the date of the death of the last of the members of any Union covered by this Agreement at the time of the execution of this Agreement, otherwise this Trust shall have perpetual existence except as provided in the next preceding paragraph hereof.

ARTICLE 12

SECTION 1. The Trustees are authorized to extend the coverage of this Agreement and Trust to such other employers and employees as such Trustees shall agree upon, provided such employers and employees are required to conform to the terms and conditions of the trust and to make the same rate of payments required of the Employers herein.

Vesting of Rights

SECTION 1. No employee, or other person shall have any vested interest or right in the Trust Fund or in any payments from the Trust Fund; provided, however, the rights of any person who has become eligible for benefits hereunder by fully meeting the requirements of this Trust Agreement shall not be affected, changed, or altered by any amendment to this Trust Agreement, unless the Trust Fund, in the opinion of the Trustees, is inadequate to meet the payments due, in which event the Trustees shall determine whether such benefits shall be reduced or the Trust

ARTICLE 14

SECTION 1. In no event shall the Employers, directly or indirectly, receive any refund or contributions made by them to the Trust, except in case of bona fide mistake, not directly or indirectly participate in the disposition of the Trust Fund or receive any benefits from the Trust Fund. Upon transfer to the Trustees, all responsibilities of the Employers for each contribution shall cease, and the Employers shall have no responsibilities for the acts of the Trustees. No er's contribution, or the Trust Fund, except as may be expressly provided for in this Agreement. SECTION 2. The Union or the Employer may, at any time, demand of the Trustees an account. Trustees shall be entitled, at any time, to have a judicial settlement of their accounts and judicial determination of any questions in connection with their duties and obligations under this Trust, time, file with the Union and the Employer a statement of their accounts thereunder, and the Union and the Employer a statement of their accounts thereunder, and the accounting, and any such Agreement shall be binding and conclusive upon all persons whomsever, and shall constitute a full discharge and acquittance of the Trustees with respect to the matters set forth in such statement or accounting. Any Trustee who has resigned, been removed from office or not been reappointed shall execute all instruments necessary to transfer the Truste

SECTION 3. In the event any question or dispute shall arise as to the proper person or persons to whom any payments shall be made hereunder, the Trustees may withhold such payment until an adjudication of such question or dispute, satisfactory to the Trustees, in their sole discretion,

or the Trustees shall have been adequately indemnified against loss to their

SECTION 4. Non-payment by an Employer of any moneys due shall not relieve any other Employer from his obligation to make payment. In addition to any other remedies to which the parties may be entitled, the Trustees are hereby given the power to add to the contribution of any Employer a substantial penalty to be fixed by the rules and regulations promulgated by them as hereinafter provided, for failure to make prompt payments to the Fund as provided for herein and in the collective bargaining agreement, and are hereby given the power to collect such penalty, when assessed, in the same manner as they are given power to collect the contributions. Failure to pay or comply with any provision of this Trust Agreement, or any rule or regulation made by the Trustees, shall be considered a violation of the terms and conditions of the employment agreement with any Employer.

The Trustees shall have the right to request the Union to undertake the obligation of assisting the Trustees in the collection of contributions to the Trustees from all Employers of members of the Union within the jurisdiction outlined above.

SECTION 5. Where used in this Agreement, words in the masculine shall be read and construed as in the feminine, and words in the singular shall be read and construed as though used in the plural, in all cases where such construction would so apply.

SECTION 6. The Article titles are included solely for convenience and shall, in no event, be construed to affect or modify any part of the provisions of this Agreement or be construed as part

SECTION 7. This Agreement shall in all respects be construed according to and be governed by the laws of the State of Illinois.

## ARTICLE 15

# eries of Agreement

It shall be the duty of the Trustees to record this Agreement in the office of the Recorder of Deeds of Cook County, Illinois, within fifteen (15) days after the execution thereof, and thereafter to record any amendments thereto within fifteen (15) days after any such amendment is adopted in accordance with the terms hereof.

### ARTICLE 16

Should any provision of this Declaration of Trust be held to be unlawful or unlawful as to any person or instance, such fact shall not adversely affect the other provisions herein contained or the application of said provisions to any other person or instance, unless such illegality shall make impossible the functioning of the plan. No trustee shall be held liable for any act done or performed in pursuance of any provision hereof prior to the time such act or provision shall be held unlawful by a court of competent jurisdiction.

IN WITNESS WHEREOF, the Union and the Employers have caused this Agreement to be executed by its President and attested by its Secretary, and the Trustees, in order to evidence their acceptance of the Trust hereby imposed have caused this Agreement to be executed this

A. D. 195

APPROVED

(Carlos)

TRUCK DRIVERS, OIL DRIVERS, FILLING STATION and PLATFORM WORKERS' UNION, LOCAL 705, an affiliate of the International Brotherhood of Teamsters (AFL)

(Employers)

ILLINOIS MOTOR TRUCK OPERATORS ASSN.

CENTRAL MOTOR FREIGHT ASSOCIATION

BY

CARTAGE EXCHANGE OF CHICAGO

BY

### Exhibit 1B Amended Trust Agreement

(See Opposite) &

# LOCAL 705 INTERNATIONAL BROTHERHOOD OF TEAMSTERS PENSION TRUST FUND

# AMENDED TRUST AGREEMENT

The undersigned duly appointed, qualified and acting Trustees of Local 705 International Brotherhood of Teamsters Pension Trust Fund existing under and by virtue of an Agreement and Declaration of Trust (hereinafter referred to as "Agreement" or "Trust Agreement") entered into as of January 1, 1955, by and between Truck Drivers, Oil Drivers, Filling Station and Platform Workers Union Local No. 705, an affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, an unincorporated association commonly known as a labor organization (therein referred to as the "Union"), the Illinois Motor Truck Operators Association, Central Motor Freight Association and Cartage Exchange of Chicago, for and on behalf of themselves, their then and future constituent members, and such other Employers who may become parties thereto (therein collectively referred to as the "Employer"), and H. E. Wood, Louis F. Peick and Fred Tiedt (therein designated as the original Trustees to represent the Union in accordance with the provisions thereof) pursuant to Article 10 of said Trust Agreement, hereby amend the same, effective January 1, 1969, to read as follows:

# WITNESSETH:

WHEREAS, the Union and the Employer, believing that it was in the best interests of Employees represented by the Union (as those terms are hereinafter defined) and the families and dependents of such Employees, to provide for retirement and related benefits, therefore established Local 705 International Brotherhood of Teamsters Pension. Trust Fund (Trust Fund); and

WHEREAS, the Union and the Employer have heretofore entered into written Collective Bargaining Agreement(s) under the terms of which it is provided that the Employer make certain payments to said Trust Fund and therein further specifying the basis upon which such payments are to be made;

NOW, THEREFORE, for and in consideration of the premises and of the mutual covenants and agreements herein contained, the Union and the Employer hereby accept and adopt all of the provisions herein contained, and the Trustees declare that they will receive and hold the contributions and any other money or property which may come into their hands as Trustees of and for the Trust Fund, with the powers, duties, uses and purposes as hereinafter set forth:

## ARTICLE 1

# Definition of Terms

SECTION 1. Employer—The term "Employer" as used herein shall mean any employer association or individual employer who heretofore has executed or who hereafter executes a collective bargaining agreement with the Union or any Local Union affiliated with said International Brotherhood of Teamsters therein obligating the Employer to make certain payments to the Trust Fund and specifying the basis upon which said payments are to be made; provided, further, however, that such Employer satisfies the requirements for participation as established by the Trustees and agrees to be bound by this Trust Agreement and all amendments made thereto from time to time.

SECTION 2. Union-The term "Union" as used herein shall mean Truck Drivers, Oil Drivers, Filling Station and Platform Workers Union Local No. 705, an affiliate of said International Brotherhood of Teamsters.

SECTION 3. Employees-The term "Employees" as used herein shall include:

- 1. A person working within the jurisdiction of the Union or for an Employer who on the Employee's behalf makes contributions to the Trust Fund;
- b. All persons employed by, and officers of, the Union and persons employed by the Trust Fund. The Union and Trust Fund shall be deemed an Employer as to such persons under this Trust Agreement and shall make the same payments to the Trust Fund upon the basis specified in collective bargaining agreements in force from time to time between the Union and Employer covering cartage drivers (said collective bargaining agreement presently in force is known as the "Joint Area Cartage Agreement"). Neither the Union nor Trust Fund shall participate as an Employer in the appointment or selection of Employer Trustees under the provisions of Article 2, Section 2 and related provisions of this Trust Agreement.

SECTION 4. Trustees—The term "Trustees" as used herein shall mean the Trustees designated in the Trust Agreement together with their successors designated and appointed in accordance with the terms of said Trust Agreement.

SECTION 5. Trust Fund-The term "Trust Fund" shall include and refer to all of its property of any kind and nature whatsoever.

SECTION 6. Employer Contributions—The term "Employer Contributions" as used herein shall mean payments made by Employers to the Trust Fund herein created.

SECTION 7. Military Service of the United States—The term "Military Service of the United States" shall refer to active service in the Armed Forces of the United States, including active service in the Regular or Reserve components of the Army, Navy, Marine Corps, Air Force, and Coast Guard.

SECTION 8. Period of National Emergency—The term "Period of National Emergency" shall include any period during which the United States is at war with another Country or during which the President of the United States or the Congress of the United States has declared the United States to be in a National Emergency or state of war or during which the United States is engaged in "police" or other actions pursuant to the United Nations Charter or similar treaties or agreements; and any person serving in the Military Service of the United States by reason of involuntary induction through a Selective Service System or similar system of induction shall be regarded as serving during a period of National emergency.

## ARTICLE 2

# Creation of Trust Fund and Appointment of Trustees

SECTION 1. Designation—The Union and the Employers hereby create and establish, with the Trustees herein provided for, a Trust, to be known as LOCAL 705 INTERNATIONAL BROTHER-HOOD OF TEAMSTERS PENSION TRUST FUND, which shall be comprised of assets initially derived from Employer contributions made pursuant to the Collective Bargaining Agreement between the parties (plus any additional sum or sums, from Employer contributions which may hereafter be agreed upon by the Employers and the Union and set forth in written collective bargaining agreements), together with all insurance and annuity contracts (including dividends, refunds, or other sums payable to the Trustees on account of such insurance and annuity contracts) and all investments made and held by the Trustees on account of such insurance and annuity contracts, all investments made and held by the Trustees on account of such insurance and annuity contracts, all investments made and held by the Trustees or otherwise, and any other property received and held by the Trustees for the uses, purposes and trusts, set forth in this Agreement and Declaration of Trust where any of the foregoing is derived from the Employer contributions.

SECTION 2. Trustees—There are hereby designated six Trustees consisting of three persons representative of the Employees and three persons representative of the Employer. The Employer Trustees shall be designated by the Employers' Associations. The Employee Trustees shall be designated by the Union, and shall be known as the "Union Trustees."

SECTION 3. Impartial Trustee—Should a deadlock occur the Trustees shall appoint a neutral person empowered to break such deadlock within a reasonable length of time, failing which, an impartial umpire to decide such dispute, shall on petition of either the Union or the Employer Trustees be appointed by the District Court of the United States in Chicago, as provided by law.

SECTION 4. Vacancies in office of Trustees—In case of vacancies by death, legal incapacity, resignation or otherwise, of the Employer Trustee or Union Trustee, a successor thereto shall be appointed as provided in Article II, Section 2, hereof. Any Trustee or Trustees shall have the right to resign upon tendering ten (10) days' written notice to the remaining Trustee or Trustees, to each of the Employers' Associations parties hereto, and to the Union.

SECTION 5. Term of Office-The Trustees shall serve for a term of ten (10) years or until their successors are duly appointed and qualified.

SECTION 6. Limitation of Liability of Successor Trustees—No Successor Trustee shall be liable or responsible for any acts or defaults of any Co-Trustee or Predecessor Trustee, or for any losses or expenses resulting from or occasioned by anything done or neglected to be done in the administration of the Trust Fund prior to his becoming a Trustee, nor be required to inquire into or take any notice of the prior administration of the Trust Fund.

### ARTICLE 3

# Contributions and Collections

SECTION 1. Amount of Contributions—Payments to the Trust Fund by an Employer on behalf of an Employee shall be made in the amount and upon the basis specified in the then existing: SECTION 1.

- Written Collective Bargaining Agreement between the Union and the Employer; and
- b. Rules and Regulations promulgated by the Trustees.

SECTION 2. Time of Payment—The Trustees shall, by regulation, fix the time of payment for contributions and shall send a copy of such regulations to each Employer required to contribute.

SECTION 3. Receipt of Payment and Other Property of Trust—The Trustees are hereby designated as the persons to receive the payments heretofore or hereafter made by the Employers to the Trust Fund, and the Trustees are hereby vested with all right, title and interest in and to such moneys and all interest accrued thereon, and are authorized to receive and be paid the same. The Trustees agree to receive all such payments, deposits, moneys, insurance and annuity contracts and other assets and properties described or referred to in Article 2 and this Article 3 and to hold the same in Trust hereunder for the uses and purposes of the Trust herein created.

SECTION 4. Collections and Enforcement of Payment—The Trustees, in their fiduciary capacities, shall have the power to demand and collect, the contributions of the Employers to the Fund. Said

Trustees shall take such steps, including the institution and prosecution of and intervention in any legal proceeding that may be necessary or desirable to effectuate the collection or preservation of contributions or other amounts which may be owed to the Trust Fund, without prejudice, however, to the rights of the Union to take whatever steps deemed necessary for such purpose. The failure, however, of the Trustees or the Union to take any action to enforce collection of such contribution shall not make either of them liable for such failure to any person affected thereby, and each Employee shall be obligated to inquire and make certain that his Employer is not delinquent in making contributions to the Fund. intervention Jo and prosecution including

SECTION 5. Production of Records—Each Employer shall promptly furnish to the Trustees on demand, the names of its Employees, their Social Security numbers, the hours worked by each Employee and such other information as the Trustees may reasonably require in connection with the administration of the Trust. The Trustees may by their representatives examine the pertinent records of each Employer at the Employer's place of business whenever such examination is deemed necessary or advisable by the Trustees in connection with the proper administration of the Trust. All Employers shall annually furnish to the Trustees, if requested by them, a statement showing whether (a) the Employer is a Corporation and the names of all of its officers; (b) if not a corporation, a certificate stating that it is either a partnership or an individual proprietorship and the names of the partners or the name of the individual proprietor.

SECTION 6. Penalties—The Trustees are hereby given the power to require the payment of liquidated damages in an amount to be fixed by the rules and regulations promulgated by them as hereinafter provided, for failure to make prompt payments to the Fund as provided for herein and in the Collective Bargaining Agreement, and are hereby given the power to collect such damages, when assessed, in the same manner as they are given power to collect the contributions.

SECTION 7. Guarantee Deposits—The Trustees are given the power and authority, in their discretion, in appropriate cases, to require Employers to deposit with the Trustees, in advance, (as a guarantee for the payment of monthly contributions, and amount to be determined by the Trustees,) as a condition to such Employer's participation herein, and are given the right to require that said guarantee be continuously maintained by such Employer as a condition to the continued participation herein.

### ARTICLE 4

# Powers and Duties of Trustees

SECTION 1. The Trustees shall have general supervision of the operation of the Trust and shall conduct the business and activities of the Trust according to this Trust Agreement.

SECTION 2. The Trustees shall hold, manage, care for and protect the Trust Fund and collect the income therefrom and contributions thereto.

SECTION 3. The Trustees shall have the power, in their sole discretion, to invest in such securities or other property (real or personal) as may be permissible investments for Trustees in the State of Illinois and may sell or otherwise dispose of such securities or other property at any time and from time to time as they see fit; provided, further, the Trustees in their discretion may invest the Trust Fund or any part thereof in personal property, real property and improvements thereto and thereon, retirement annuity contracts, retirement income contracts, group contracts, and such other forms of contracts, provided all such contracts are issued by a legal reserve life insurance company authorized to do business in the State of Illinois as may be selected by the Trustees for purposes of providing for all or a part of the benefits provided under this Trust.

SECTION 4. All Trust Funds not invested shall be deposited by the Trustees in such depository or depositories as the Trustees shall from time to time select, and any such deposit or deposits shall be made in the name of the Trust. All such funds shall be disbursed only by check or draft, signed by a least one Trustee representing the Employers and one Trustee representing the Employees. No Trustee shall be liable in any manner for the failure of any depository selected by the Trustees, in good faith, and in the exercise of reasonable business judgment.

SECTION 5. The Trustees shall keep true and accurate books of account and a record of all their transactions, meetings, and the actions taken at such meetings or by informal action of the Trustees.

SECTION 6. The Trustees shall procure an audit of the books of the Trust by a-Certified Public Accountant not less frequently than once each year and a copy of each such audit shall be furnished to each Trustee, the Employers, and the Union, and a copy of such audit shall be kept available for inspection by authorized persons during business hours at the office of the Trustees. The Trustees, in addition thereto, shall prepare a semi-annual financial statement for the parties.

SECTION 7. All checks, drafts, vouchers or other withdrawals of funds from the Trust Fund shall be signed by the Employer Trustee and the Union Trustec, provided, however, that the Trustees may establish a special bank account of limited amount out of which expenses of operation of the Trust may be paid on the signature of a Trustee or a duly authorized employee of the Trust.

SECTION 8. The Trustees shall incur no liability in acting upon any instrument, application, request, signed letter, telegram, or other paper or document believed by them to be genuine contain a true statement of facts, and to be signed or sent to the proper person.

SECTION 9. Any Trustee may rely upon any instrument in writing purporting to have been signed by a majority of the Trustees as conclusive evidence of the fact that a majority of the Trustees have taken the action stated to have been taken in such instrument.

SECTION 10. No Trustee shall be liable for any action taken or omitted to be taken by him in good

the Trustees with faith, nor for the wrongful acts of any agent, employee or attorney selected by treasonable care, nor for any act of commission or omission of any other Trustee.

SECTION 11. The Trustees are hereby authorized to formulate and promulgate any and all necessary rules and regulations which they deem necessary or desirable to facilitate the proper administration of the Trust, provided the same are not inconsistent with the terms of this Agreement. All rules and regulations adopted by majority action of the Trustees for the administration of the Trust Fund shall be Minding upon all parties hereto, all parties dealing with the Trust and all persons claiming any benefits hereunder.

SECTION 12. Any successor Trustee appointed in accordance with the provisions of this Agreement, upon accepting in writing the terms of this Trust, shall be vested with all of the rights, powers and duties of his predecessor.

SECTION 13. No party dealing with the Trustees shall be obliged (a) to see the application to the trust purposes herein stated of any money or property belonging to the Trust Fund, or (b) to see that the terms of this Agreement have been complied with, or (c) to inquire into the necessity or expediency of any act of the Trustees. Every instrument executed by the Trustees shall be conclusive evidence in favor of every person relying thereon (a) that at the time of the delivery of said instrument the Trust was in full force and effect, (b) that the instrument was executed in accordance with the terms and conditions of this Agreement and (c) that the Trustees were duly authorized and empowered to execute the instrument.

SECTION 14. The receipt of the Trustees for any money or property or checks, after such checks are honored at the bank and paid to the Trust Fund received by the Trustees shall discharge the person or persons paying or transferring the same.

SECTION 15. The Trustees shall, by regulation, establish rules relating to payments of contributions by Employers for Employees during periods of such Employees' illness or disability and related

SECTION 16. The Trustees are hereby empowered, in addition to such other powers as are set forth herein or conferred by law;

- a. To enter into any and all contracts and agreements for carrying out the terms of this Agreement and for the administration of the Trest Funds and to do all acts as they, in their discretion, may deem necessary or advisable, and such contracts and agreements and acts shall be binding and conclusive on the parties hereto and on the Employees involved.
  - b. To keep property and securities registered in the name of the Trustees or in the name of a nominee or nominees or in unregistered or bearer form without disclosure of any fiduciary relationship.
- c. To establish and accumulate as part of the Trust Fund a reserve or reserves, adequate, in the opinion of the Trustees, to carry out the purposes of such Trust.
- To pay out of the funds of the Trust all real and personal property taxes, ome taxes and other taxes of any and all kinds levied or assessed under exist; or future laws upon or in respect to the Trust Fund or any money, property securities forming a part thereof. income
- e. To employ and compensate from the Trust Fund an investment agent and delegate to such investment agent all of the Trustees' powers, duties and responsibilities regarding the purchase, sale, exchange, disposition, voting and management of such of the assets of the Trust Fund as are deposited with the investment agent from time to time; provided, however, that such investment agent shall be a national or state bank or trust company authorized to conduct a trust business in Illinois, having a capital, surplus and undivided profit of not less than \$25,000,000.00; and provided, further, that such investment agent or the Trustees may terminate such employment at any time upon reasonable notice to the other; and provided, further, that none of the assets of the Trust Fund shall be invested in securities or other property of any person, firm or corporation engaged in the trucking industry.
  - f. To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder.

SECTION 17. The Trustees shall use and apply the Trust Fund for the following purposes:

- a. To pay or provide for the payment of all reascnable and necessary expenses of collecting the contributions and administering the affairs of this Trust, including the employment of such administrative, legal, actuarial, expert and clerical assistance, as may be reasonably necessary, the acquiring by lease, ownership or otherwise, of such premises as may be necessary for the operation of the affairs of the Trust, and the purchase or leasing of such materials, supplies and equipment as the Trustees, in their discretion, find necessary or appropriate to the performance of their duties.
  - b. To pay or provide for the payment of benefits (under a plan as formulated by the Trustees under Article 7, Section 1 of this Agreement) to Employees (their families and dependents) and to provide like payments of benefits to other Employees (their families and dependents) who are not members of the

Union but are members of any other International Brotherhood of Teamsters Local Union whose Employer has become obligated under a written Collective Bargaining Agreement with said other Teamster Local Union to make contributions to the Trust Fund and whose contributions, when made and accepted by the Trustees, shall bind such an Employer to the Trust Agreement, as amended from time to time and the Rules and Regulations promulgated thereunder from time to time.

SECTION 18. The Trustees, by majority action, shall have the power to construe the provisions of this Agreement and the terms and regulations of the pension plan, and any construction adopted by the Trustees in good faith shall be binding upon the Union, Employees and Employers.

SECTION 19. The Trustees, by resolution, shall provide for fidelity bonds, in such amounts as they may determine, for their Employees and for the Trustees who shall be authorized to withdraw moneys from the Trust.

SECTION 20. The Trustees may employ an Administrative Director and others who may be Trustees, to assist them in the administration, supervision and operation of the Trust and the conduct of the business and activities of the Trust, according to this Trust Agreement, and provide for reasonable compensation to be paid the said Administrator and others, but in no event shall such hire be for a period in excess of fifteen (15) years.

SECTION 21. The Trust Fund shall indemnify and save harmless any person (including his executors, administrators, heirs, legatees or legal representatives) who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was an officer, trustee, employee, or agent of the Trust Fund, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, proceedings or investigation, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Trust Fund, and with respect to any criminal action or proceedings had no reasonable cause to believe that his conduct was unlawful, irrespective of the final outcome of such action or proceedings.

## ARTICLE 5

# Controversies and Disputes

SECTION 1. In any controversy, claim, demand, suit at law, or other proceeding between any member, beneficiary, or any other person and the Trustees, the Trustees shall be entitled to rely upon any facts appearing in the records of the Trustees, any instruments on file with the Trustees, with the Union or with the Employers, any facts certified to the Trustees by the Union or the Employers, any facts certified to the Trustees by the Union or the Employers, any facts any other evidence pertinent to the issue involved.

SECTION 2. All questions or controversies, of whatsoever character, arising in any manner or between any parties or persons in connection with the Trust Fund or the operation thereof, whether as to the construction of the language or meaning of the rules and regulations adopted by the Trustees or this Agreement, or as to any writing, decision, instrument or accounts in connection with the operation of the Trust Fund or otherwise, shall be submitted to the Trustees for decision, and the decision of a majority of the Trustees, present and voting, if made in good faith, shall be binding upon all persons dealing with the Trust Fund or claiming any benefit thereunder.

SECTION 3. The Trustees may, in their sole discretion, compromise or settle any claim or controversy in such manner as they think best, and any majority decision made by the Trustees in compromise or settlement of a claim or controversy, or any compromise or settlement agreement entered into by the Trustees, shall be conclusive and binding on all Parties interested in this Trust.

### ARTICLE 6

# Operation of Trustees

SECTION 1. Officers—The officers of the Trust Fund shall consist of a chairman and a secretary-treasurer who shall be Trustees. The officers shall be elected in January and they shall serve for one year or until their successors are duly elected and qualify.

SECTION 2. Ouorum—A quorum of the Trustees for the transaction of business, except as otherwise specifically provided herein, shall consist of at least two Trustees, one of whom shall be representative of the Employers and one of whom shall be representative of the Union. It is the intention of the parties that at any time any vote or other action is taken by the Trustees, that the number of Union Trustees and Employer Trustees qualified to act, vote and constitute a quorum shall always be equal.

SECTION 4. Expenses—All proper and necessary expenses incurred by any Trustee shall be paid for from the funds of the Trust Fund. SECTION 3. Power to Act in Case of Vacancy—No vacancy or vacancies in the office of Trustees shall impair the power of the remaining Trustees, acting in the manner provided by this Agreement, to administer the affairs of the Trust notwithstanding the existence of such vacancy or vacancies.

SECTION 5. Meetings-A regular annual meeting of the Trustees shall be held during the month of February or March each year at a date fixed by the Trustees. The Chairman, the Secretary-

Treasurer, or any two Trustees, may call a meeting of the Trustees at any time by giving at least five (5) days' written notice of the time and place thereof to each Trustee. There shall also be meetings at six-month intervals. Such notice may be delivered in person, by mail or by telegram or conveyed by telephone. A meeting so called shall be adjourned for a reasonable period upon the request of any Trustee showing a justifiable cause therefor to the other Trustees. Meetings of the Trustees may also be held at any time without notice if all the Trustees consent thereto. In the event that the Trustees shall concur in writing upon any proposition and then no meeting thereon need be held by the Trustees. The vote of the Trustees may be cast by them in person at a meeting or may be evidenced by written instruments signed by them.

## ARTICLE 7

# Establishment of Pension Plan

SECTION.1. Formulation of Plan—The Trustees shall formulate a plan for the payment of such retirement pension benefits, disability pensions and death benefits as feasible and shall begin operation of such plan as soon as they deem it possible and necessary. Said Trustees shall draft procedures, regulations and conditions for the operation of the plan, including, by way of illustration and not limitation: conditions of eligibility for covered Employees, procedure for claiming benefits, schedules of type and amount of benefits to be paid and procedures for distribution of benefits.

TION 2. Assistance for Drafting Plan-The Trustees may consult with or employ such actuarial other experts as they deem necessary for the proper formulation and operation of said pension SECTION 2.

and filed SECTION 3. Copies of Plan & Notice—A copy of such pension plan shall be adopted and file the Trustees as part of the records and minutes of the Trustees and one (1) copy of such plan be distributed to the Union and to each Employer.

SECTION 4. Amendment of Plan—The pension plan may be amended by the Trustees from time to time provided that such amendments comply with the purposes as set forth in this Trust Agreement. A copy of each amendment of the pension plan shall be adopted and filed by the Trustees as part of the records and minutes of the Trustees and one copy thereof shall be distributed to the Union and to each Employer.

### ARTICLE 8

# Spendthriff Clause

SECTION 1. No Assignment or Attachment of Benefits—Benefits payable under this plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for support of a spouse or former spouse or for any relative of the Employee prior to actually being received by the person entitled to the benefit under the terms of any Plan, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits hereunder shall be void. The Trust Fund shall not in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of any person entitled to benefits hereunder.

### ARTICLE 9

# Payments to Persons Under Legal Disability

SECTION 1. In case any benefit payments hereunder become payable to a person under legal disability, or to a person not adjudicated incompetent but, by reason of mental or physical disability, in the opinion of the Trustees, is unable to administer properly such payments, then such payments may be paid out by the Trustees for the benefit of such person in such of the following ways as they think best, and the Trustees shall have no duty or obligation to see that the Funds are used or applied for the purpose or purposes for which paid:

- a. directly to any such person;
- to the legally appointed guardian or conservator of such person;
- c. to any spouse, parent, brother or sister of such person for his welfare, support and maintenance;
  - by the Trustees using such payments directly for the support, maintenance d welfare of any such person. and

# ARTICLE 10

# Amendment of Agreement

It is anticipated that in the administration of this Trust, conditions may arise that are not foreseen at the time of the execution of this Agreement, and it is the intention of the parties that the power of amendment, which is hereinafter given, be exercised in order to carry out the provisions of this Trust, among which is to pay the largest benefits possible which are consistent with the number of members becoming and likely to become eligible for such payments, the amount of funds which are available and which will probably become available, and the following of sound actuarial

practice. Therefore, the power is given to the Trustees to amend this Agreement by majority vote, at any time and from time to time, and all parties to the Trust and all persons claiming an interest thereunder shall be bound thereby, and no member, employee member, beneficiary or any other person shall have any vested interest or right in the Trust Fund or in any payment from the Trust Fund, and the Trustees have full authority to amend, repeal, add to, or take away any right or payment retroactive or otherwise that they deem proper for the preservation of this Trust; providing, however, in no event shall the Trust Fund be used for any other purpose other than the purpose set forth in this Trust Agreement, and for the purposes of paying the necessary expenses incurred in the administration of this Trust.

# ARTICLE 11

# Termination of Trust

SECTION 1. This Trust shall cease and terminate upon the happening of any one or more of the following events:

- a. In the event the Trust Fund shall be, in the opinion of the Trustees, in-adequate to carry out the intent and purpose of this Agreement, or to meet the payments due or to become due under this Agreement to persons already drawing benefits.
- b. In the event there are no individuals living who can qualify as Employees hereunder.

SECTION 2. In the event this Trust shall terminate for any of the reasons set forth in Section of this Article 11 hereof, the Trustees shall distribute the Trust Fund in the following manner:

- a. The Trustees shall, to the extent permitted by the Trust Fund, pay over and distribute to such Employees as are receiving retirement benefits under the provisions of this Agreement, the sum equal to the actuarial value of unpaid benefits computed in accordance with the Carlisle Table of Mortality. In the event the Trust Fund is inadequate to make such payments in full, all such payments shall be decreased proportionately to the end that all such Employees shall receive prorate payments.
- b. In the event there are any moneys remaining in the Trust Fund after the payments provided for in subsection a. of this Section, then in that event such moneys shall forthwith be distributed to all Employees who have been employed for at least fifteen (15) years in equal shares.

SECTION 3. In the event the Trust hereby created is subject to the Rule against Perpetuities as existing under the law of the State of Illinois at the time in this sentence fixed for termination of the Trust, the Trust shall terminate twenty (20) years after the date of the death of the last of the members of any Union covered by this Agreement at the time of the execution of this Agreement, otherwise this Trust shall have perpetual existence except as provided in the next preceding paragraph hereof.

## ARTICLE 12

# xtension of Plan

SECTION 1. The Trustees are authorized to extend the coverage of this Agreement and Trust to such other Employers and Employees as such Trustees shall agree upon, provided such Employers and Employees are required to conform to the terms and conditions of the Trust and to make the same rate of payments required of the Employers herein.

# ARTICLE 13

# Vesting of Rights

SECTION 1. No Employee, or other person shall have any vested interest or right in the Trust Fund or in any payments from the Trust Fund; provided, however, the rights of any person who has become eligible for benefits hereunder by fully meeting the requirements of this Trust Agreement shall not be affected, changed, or altered by any amendment to this Trust Agreement, unless the Trust Fund, in the opinion of the Trustees, is inadequate to meet the payments due, in which event the Trustees shall determine whether such benefits shall be reduced or the Trust terminated.

# ARTICLE 14

# Miscellaneo

SECTION 1. In no event shall the Employers, directly or indirectly, receive any refunds of contributions made by them to the Trust, except in case of bona fide mistake, nor directly or indirectly participate in the disposition of the Trust Fund or receive any benefits from the Trust Fund. Upon transfer to the Trustees, all responsibilities of the Employers for each contribution shall cease, and the Employers shall have no responsibilities for the acts of the Trustees. No Employee shall have any individual right, title, interest, or claim against any Employer, Employer's contribution, or the Trust Fund, except as may be expressly provided for in this Agreement.

SECTION 2. The Union or the Employer may, at any time, demand of the Trustees an accounting with respect to any and all accounts upon agreement to pay necessary expenses thereof. The Trustees shall be entitled, at any time, to have a judicial settlement of their accounts and judicial

determination of any questions in connection with their duties and obligations under this Trust, or in connection with the administration or distribution thereof. The Trustees may, from time to time, file with the Union and the Employer a statement of their accounts thereunder, and the Union and the Employer may enter into an Agreement approving and allowing such statement or accounting, and any such Agreement shall be binding and conclusive upon all persons whomsoever, and shall constitute a full discharge and acquittance of the Trustees with respect to the matters set forth in such statement or accounting. Any Trustee who has resigned, been removed from office or not been reappointed shall execute all instruments necessary to transfer the Trust Fund.

SECTION 3. In the event any question or dispute shall arise as to the proper person or persons to whom any payments shall be made hereunder, the Trustees may withhold such payment until an adjudication of such question or dispute, satisfactory to the Trustees, in their sole discretion, shall have been made, or the Trustees shall have been adequately indemnified against loss to their satisfaction.

SECTION 4. Non-payment by an Employer of any moneys due shall not relieve any other Employer from his obligation to make payment. In addition to any other remedies to which the parties may be entitled, the Trustees are hereby given the power to add to the contribution of any Employer a substantial penalty to be fixed by the rules and regulations promulgated by them as hereinafter provided, for failure to make prompt payments to the Fund as provided for herein and in the Collective Bargaining Agreement, and are hereby given the power to collect such penalty, when assessed, in the same manner as they are given power to collect the contributions. Failure to pay or comply with any provision of this Trust Agreement, or any rule or regulation made by the Trustees, shall be considered a violation of the terms and conditions of the Collective Bargaining Agreement between the Union and the Employer.

SECTION 5. Where used in this Agreement, words in the masculine shall be read and construed as in the feminine, and words in the singular shall be read and construed as though used in the plural, in all cases where such construction would so apply.

SECTION 6. The Article titles are included solely for convenience and shall, in no event, be construed to affect or modify any part of the provisions of this Agreement or be construed as part thereof. SECTION 7. This Agreement shall in all respects be construed according to and be governed by the laws of the State of Illinois.

# ARTICLE 15

# lation of Agreement

It shall be the duty of the Trustees to record this Agreement in the office of the Recorder of Deeds of Cook County, Illinois, within fifteen (15) days after the execution thereof, and thereafter to record any amendments thereto within fifteen (15) days after any such amendment becomes effective in accordance with the terms hereof.

# ARTICLE 16

# Savings Clause

Should any provision of this Trust Agreement be held to be invalid or invalid as to any person or instance, such fact shall not adversely affect the other provisions herein contained or the application of said provisions to any other person or instance, unless such invalidity shall make impossible the functioning of the plan. No Trustee shall be held liable for any act done or performed in pursuance of any provision hereof prior to the time such act or provision shall be held invalid by a court of competent jurisdiction.

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UNION TRUSTEES

EMPLOYER TRUSTEES

Howard Willett, Jr. Roy Pride Albert Taphorn Louis F. Peick

Eugene McCarron Frank Kratky

Betretary Treusurer



### Local Union No. 705

TERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS WAREHOUSEMEN & HELPERS OF AMERICA

man SColey 8-3233

220 SOUTH ASHLAND BOULEVARD CHICAGO 7, ILLINOIS

April 22, 1955

Re: PENSION FUND

Dear Member:

I am happy to report that I have received the necessary approval from the Department of Internal Revenue regarding our Pension Plan.

As you know, I have been very anxious to get this plan set up and in working order for the benefit and protection of the members and their families.

We still have a lot of work to be done such as meetings with the Employer Trustees, the Trustees of this Local Union and our attorney, to lay the ground work, setting up rules and regulations, etc., in order to give the members the best deal possible.

There is one set rule at this time, and that is in order to be eligible for Pension the driver must have been employed for a period of 20 consecutive years with any employer who is, or has been under Contract with this Local Union. The driver must also have reached the age of 65 years.

Any member who thinks he is eligible and would like to take advantage of the Pension Plan, please report to this office for further information.

Fraternally yours.

Stewood

H. E. WOOD, Sec'y-Treas. Local 705, I. B. of T., A. F. of L.

HEW/mp



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### Exhibit 1D 1958 Local 705 Health & Welfare and Pension Funds Booklet

(See Opposite)

LOCAL 705, I. B. of T.

### Health & Welfare and Pension funds

220 SOUTH ASHLAND BOULEVARD
CHICAGO 7, ILLINOIS
Telephone SEeley 8-2800



#### HEALTH & WELFARE AND PENSION PLANS

As Revised
AUGUST 1, 1958





### Local Union No. 705

International Brotherhood of Teamsters, Charffeurs, Warehousemen and Helpers of America

220 SOUTH ASHLAND BOULEVARD CHICAGO 7. ILLINOIS

Phone: SEeley 8-2800

Dear Sir and Brother:

You and your family, including unmarried children up to 18 years of age, are protected by Local 705, International Brotherhood of Teamsters, Health and Welfare Fund and Local 705 International Brotherhood of Teamsters Pension Trust Fund. The rules and regulations of the respective funds are contained in this booklet. The purpose of these Funds is to take care of you and your family in case of illness, disability, accident, retirement, or death.

It is during those times that you and your family need the greatest amount of help because illness deprives the family of their breadwinner and his earnings. These plans were designed as far as we possibly could go subject to the Taft-Hartley Law in protecting you and your family. We would have liked to have done more, but we were limited by both the laws and the amount of contribution paid into the Funds. It is useless to promise you benefits when the Funds will be unable to pay them, and therefore, the Trustees have designed this plan so that they will pay the highest amount of money possible consistent with solvent and workable Funds. Under the law the Funds must be administered jointly by an equal number of Employer and Union representatives and therefore the Union does not have the full say as to how the Fund shall be run or what benefits shall be paid. It must be done jointly with the Employers. Only in the event of a deadlock among Trustees does the law provide for the appointment of an impartial Trustee to break the deadlock.

The Trustees at all times have the right to make all necessary and proper changes which they believe are necessary for the protection of the members and the Fund, and these rules and regulations which are set forth in this pamphlet are subject to this understanding and limitation.

READ THE RULES CAREFULLY. Keep this book with you at all

times and see that your family and others who are eligible to participate in this plan are also made acquainted with the contents of this pamphlet.

Remember, too, you must be an employee member who is in good standing and has paid your dues to be eligible for benefits under these plans.

Just a friendly reminder (inasmuch as Local 705 f. B. of T. has collective bargaining agreements with all employers), to be eligible for benefits from the Health and Welfare Fund or Pension Fund you must observe the following:

- If you are a new member you must be in good standing with Local 705 I. B. of T. for six consecutive months.
- 2. Your union dues must be paid during the first month of each quarter (January, April, July, October).
- 3. You must have had paid into the Health and Welfare Fund the required weekly sum (now \$3.50 per week) since January 1, 1953, and into the Pension Fund the required weekly sum (now \$2.50 per week) since January 1, 1955 or from the date that you became a member of the union.
- Your Health and Welfare Fund and Pension Fund payments must be made before the tenth of each month for the previous month.
- You must not be in arrears in your union dues or payments to the Health and Welfare or Pension Funds. Otherwise you must wait ninety days after making such payments in order to become eligible to receive benefits from the respective Funds.
- 6. If an employee is injured on the job the Employer shall continue to pay the required contributions until such employee returns to work, provided, however, such contributions shall not be paid for a period of more than six (6) months in any twelve-month period.
- If an employee is absent because of illness or off-the-job injury and notifies the Employer of such absence, the Employer shall be required to make contributions for a period of four (4) weeks.
- 8. The Employee shall pay the required contributions of \$3.50 per week to the Health & Welfare Fund and \$2.50 per week to the Pension Fund if he is off more than four (4) weeks due to illness or off-the-job injury in order to continue to be eligible for any future benefits.

To be eligible to receive Pension payments you must have reached the age of sixty-five, been employed by a covered employer who has been under contract with Local 705 I. B. of T. for twenty consecutive years and either he or you has paid into the Pension Fund continuously the required weekly payments beginning with January 1, 1955 on your behalf, be retired and not engaged in the craft (see Rule 1 on page 6).

### THE FOLLOWING QUESTIONS AND ANSWERS SHOULD BE OF INTEREST TO YOU.

### HOSPITAL AND SURGICAL CLAIMS

- 1. Q. If I use Dr. Simon's service for an operation do I have to pay any part of the doctor or hospital bills?
  - A. If you use Dr. Simon's service through the Clinic you do not pay any part of the doctor or hospital bills except for blood used in transfusions.
- 2. Q. How do I make claims for hospital or surgical benefits if I use any other hospital or doctor?
  - A. If you use any other hospital or doctor do the following:
    - a. Request physician's report form from the Health & Welfare office and give to your doctor to fill out.
    - Pay your doctor and hospital bill and present paid bills and physician's report to Dr. Simon's Clinic.
    - c. Be sure you give all necessary information needed such as who incurred the bill, your ledger book number, home address and phone number. This information will speed the processing of the bills. You will be reimbursed within a week to ten days according to the schedule in the Health & Welfare booklet, if you are eligible for benefits.
- 3. Q. Will the amount shown in the schedule be paid for surgical operation if a less expensive rate is obtained?
  - A. No. The Plan provides payment for ACTUAL FEES CHARGED, with a maximum benefit equal to the amount shown in the schedule.
- 4. Q. Am I entitled to be paid for office or house calls by a doctor other than from Dr. Simon?
  - A. No. You would have to pay for office calls and house calls if you do not use Dr. Simon's services.
- 5. Q. Must I report to Dr. Simon's office before going to any other doctor or hospital?
  - A. No. You must, however, present your paid bills for allowable reimbursement within 30 days after discharge from the hospital.

#### THINGS TO REMEMBER . . .

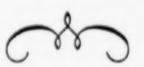
- 1. Q. How can I make sure that my Health & Welfare and Pension Fund payments are paid each month?
  - A. It is your responsibility to check with the Health & Welfare Office to see that your payment is included on the list that your Employer turns into the office each month.
- 2. Q. What happens if I change my employment which comes under the jurisdiction of another Local?
  - A. Your benefits terminate the day you take a transfer card from this Local or you stop working under the jurisdiction of Local 705, I. B. of T.
- 3. Q. What happens if I take a withdrawal card?
  - A. Your benefits terminate the day that you take the withdrawal card.
- 4. Q. How do I report on the sick list?
  - A. By notifying the Health & Welfare Office either by telephone or by mail.
- 5. Q. When do the benefits itart?
  - A. From the day that you notify the office or from the day that your letter is postmarked.
- 6. Q. Will I receive any sick benefit if I am off less than five (5) working days?
  - A. No. You will be paid \$45.00 per week sick benefit only if you are off five (5) full working days. You will not receive any sick benefit for time off for less than five (5) working days.
- 7. Q. Will I receive any sick benefit if I do not report until I go back to work?
  - A. No. You must report the first day of sickness or injury, and you will only be paid from the day that such sickness or injury was reported to the Health & Welfare Office.
- 8. Q. Muss I report off of the sick list?
  - A. Yes. You must report off the sick list the same day that you return to work.

- 9. Q. If I am off with the same illness or disability for a period of 24 months, am I entitled to collect forty (40) weeks' sick benefit?
  - A. No. The maximum sick benefit allowed to any sick or disabled member from any one sickness or disability shall be twenty (20) weeks, but in no event shall more than twenty (20) weeks' benefits be allowed in any one twelve (12) month period.

We shall strive to better these plans as the law and economic conditions may allow.

Fraternally yours,

LOUIS F. PEICK, Secretary-Treasurer



### BROTHERHOOD OF TEAMSTERS



#### PENSION TRUST FUND

Union Trustees Fred Tinds Louis F. Peick Frank Kratky Employer Trustees Roy Pride George W. Johnson William C. Winkler

#### RULES AND REGULATIONS

#### RULE I

An employee member shall be eligible to receive a pension of \$75.00 per month upon reaching his sixty-fifth birthday, provided, nevertheless, that (a) he is qualified to receive such pension under the provisions of the Pension Trust and the rules and regulations promulgated thereunder and as amended from time to time; (b) he has been both employed by an employer who has been under collective bargaining agreements with Local 705, and a member of good standing of Local 705 for twenty (20) consecutive years; and provided, further, that he, or his employer, has continuously paid for him into the Pension Trust Fund the sums required under respective collective bargaining agreements in force from time to time since January 1, 1955. (c) he shall not be employed while receiving pension benefits either as a driver nor be engaged in any employment or occupation in State of Illinois which may come under the jurisdiction of Local 705, nor shall be engage directly or indirectly as employee, partner, associate, or shareholder or officer of any corporation, or otherwise, in the trucking industry outside of the State of Illinois; and provided, further, that the trustees may from time to time designate other employments in which pensioners may not engage as a condition to continuing eligibility entitlement; (d) he makes written application to the trustees in form approved by them for pension payments, and payment shall commence on the first day of the calendar month next succeeding either the date of his retirement or thirty days after his written application for pension, whichever occurs later.

#### RULE 2

An employee member who is otherwise eligible for pension but who does not retire shall not receive pension benefits until after retirement, provided, nevertheless, that on the date of his retirement he shall meet the requirements and comply with the provisions as hereinbefore set forth in RULE 1.

#### RULE 3

All pension payments and eligibility requirements shall be subject to extension, revision, or other conditions which the trustees may impose or promulgate from time to time, provided that such conditions shall be uniform in application to all eligible employee members similarly circumstanced.

#### RULE 4

A. The maximum sum of \$2.50 per regular employee, per week, shall be paid by the employer for each employee other than casual or emergency employees, covered under Collective Bargaining Agreement for any week in which such employee performs any service for the employer, even when such service is not performed under the terms of the Collective Bargaining Agreement. Casual or emergency employees are to be paid for at the rate of \$0.50 per day.

B. If an employee is absent because of non-occupational illness or injury, the employer shall continue to make the required \$2.50 weekly contribution to the Pension Fund for a period of four (4) weeks.

C. If an employee is absent because of occupational illness or injury, the required \$2.50 weekly contribution shall be made into the Pension Fund until the employee returns to work or for a period of six months, whichever period is the shorter.

D. All leaves of absence, when granted by the employer, in addition to the requirements of the parties, shall be conditioned upon the employer and the employee making satisfactory arrangements for paying the \$2.50 weekly contribution to the Pension Fund and at all times the payments shall be made by the employer for the period of such granted leave of absence.

E. Payments are due not later than the 10th of the month immediately following the employer's payroll period based on the number of Saturdays in the previous month. For example, a four week's payment of \$2.50 per week or a total of \$10.00 will be due the Pension Fund for those months which have four Saturdays; and a five weeks' payment of \$2.50 per week or a total of \$12.50 will be due the Pension Fund for those months which have five Saturdays.

F. If payment is not received by the tenth day of the month the employee member will not be eligible to receive any benefits.

G. All payments required to be made to the Pension Fund shall be payable to Local 705 1. B. of T. Pension Fund, 220 South Ashland Boulevard, Chicago 7, Illinois, and shall be accompanied by an original copy of remittance in the form approved by the trustees.

H. In the event of delinquent payments to the Fund by an employer or employee member, then such employee member shall be ineligible to participate in the Fund until the expiration of ninety (90) days from the date upon which all latest delinquencies have been paid and satisfied. The delinquency of an employee member can not be cured after his death, and his beneficiaries shall be barred from participating in the Fund unless such delinquency had been cured more than ninety (90) days preceding such death.

#### RULE 5

These rules shall apply to employee members of International Brother-hood of Teamsters, Local Unions 301, 704, and 801, respectively, whose employers have become obligated under a collective bargaining agreement to make contributions to the Fund and who have, with the written consent of the trustees, accepted and agreed to be bound by the trust agreement and the rules and regulations, as amended from time to time, in which event such respective locals shall be substituted for Local 705 wherever the same appears herein and the context so admits. Whenever Local 705, International Brotherhood of Teamsters, absorbs the members of another International Brotherhood of Teamsters Local Union, then such members' employment, for purposes of pension entitlement, shall be reckoned from the time they became members of the absorbed local, provided, nevertheless, that they otherwise comply with, qualify, and are eligible for pension under then existing rules.

#### RULE 6

The eligibility date for the beginning of pensions shall be April 1, 1955. These rules shall become effective August 1, 1958, and shall supersede all other rules and shall in no wise be deemed to amend the declaration of trust creating the Fund. Nothing herein contained shall be construed as requiring any employer or employee member to violate any applicable law. If any rule shall be ultimately declared invalid or inoperative by competent authority the trustees reserve authority to suspend the operation of such provision during the period of its invalidity and to substitute in its place and stead provisions which will meet such objections. If any rule shall be held invalid the remaining rules or the application of such rule to persons or circumstances other than those to which they may have been declared invalid shall not be affected thereby.

Exhibit 1E
1969 Local 705 Health & Welfare
and Pension Funds Booklet

(See Opposite)

LOCAL 705 I. B. of T.

# HEALTH & WELFARE AND PENSION FUNDS

220 SOUTH ASHLAND BOULEVARD
CHICAGO, ILLINOIS 60607
Telephone 738-2800



HEALTH & WELFARE AND PENSION PLANS

As Revised
Effective January 1, 1969



### Local Union No. 705

international Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

Phone: 738-2800

220 SOUTH ASHLAND BOULEVARD CHICAGO, ILLINOIS 60607

Dear Sir and Brother:

This new booklet contains the revised rules effective January 1, 1969 respecting two benefit plans which have been greatly improved and which are very important to you and your family, namely:

Local 705 International Brotherhood of Teamsters Pension Trust Fund and Local 705 International Brotherhood of Teamsters Health & Welfare Fund

These funds afford protection to you and your wife and unmarried children under eighteen years of age. Each Fund serves a purpose in taking care of you and your family in case of illness, disability, retirement or death—for it is during such times that you or your family need help because either of the loss of your earnings or the hardship imposed in meeting bills for medical, surgical and hospital care and services.

These Plans have been improved and now provide new and valuable benefits. While they started from scratch a few years ago, nevertheless they have been continually improved as a result of securing larger contributions from Employers under Collective Bargaining Agreements with Local 705. The Funds have always been financially sound and have met all benefit obligations to eligible Employee-members and Dependents.

#### The Pension Plan:

The Pension Plan now provides for two kinds of retirement, namely: Normal Retirement and Permanent Physical Disability Retirement.

Normal Retirement covers an Employee member who reaches age fifty seven or retirement, whichever is later, has twenty consecutive years of unbroken service with a covered Employee and has faithfully complied with the provisions required of Employee members under the Collective Bargaining Agreement in force during that time between his covered Employer and the Union.

Originally the Pension Plan only covered Normal Retirements and paid \$75.00 a month for life, starting at age sixty-live, or retirement, whichever was later. Then the pension was increased to \$100.00 per month for life, starting at age sixty two, or retirement, whichever was later.

Later, a pensioner who retired prior to April 1, 1965, was entitled to receive \$150,00 per month for life. On April 1, 1965, Normal Retirement age started at age fifty seven, or retirement, whichever was later, and a pensioner who retired on or after that date was entitled to \$250,00 per month during the first sixty (60) months of his entitlement and \$150,00 per month thereafter for life. Effective January 1, 1969, while Normal Retirement still remains at age fifty-seven, or retirement, whichever is later, nevertheless a pensioner who retires on and after that date will be entitled to receive \$250,00 per month for life.

The Permanent Physical Disability Retirement age has now been lowered to cover an Employee member who is at least forty-five years of age with only fifteen consecutive years of unbroken service with a covered Employer and who has faithfully complied with the Collective Bargaining Agreement in force during that period of time between his covered Employer and the Union, but who, because of physical or mental condition, is permanently prevented from working. Under such conditions the Employee-member is entitled to a pension after six full months of Permanent Physical Disability, provided that he makes application therefor within seven months after the disability originated.

The monthly Permanent Physical Disability Retirement pension payments are the same as those paid under Normal Retirement. All monthly pension payments are in addition to Social Security benefits which you and your wife may receive.

Both Plans-Normal Retirement and Permanent Physical Disability Retirement-provide that if a pensioner dies before he has received one hundred twenty monthly payments from the Fund and is survived by a wife to whom he was married at the time of his retirement, then the monthly payments shall be continued to be paid to her until one hundred twenty monthly payments shall have been made since her husband's retirement, unless she dies sooner.

Also, a death benefit of \$1,000.00 is now paid upon the death of a pensioner.

#### The Health & Welfare Plan:

There are two benefit plans-Plan A and Plan B-under Health and Welfare for medical, surgical and hospital benefits.

Plan A—gives you, your wife and unmarried children under eighteen years of age complete medical, surgical and hospital care without cost by going to Dr. Oscar Simon, 2018 South Ashland Avenue, Chicago, Illinois, who is the official doctor for the Fund.

Plan B—is limited to reimbursement for charges actually paid by you but not in excess of those contained in the Schedule of Operations—if you go to your own doctor. See pp. 41-52 for Schedule.

Both plans are subject to certain exclusions such as illness or disease covered by workmen's compensation, care available from the government, treatment for alcoholism, drug addiction, mental illness, dental care, eye glasses, etc. The plans also provide for maternity benefits for your wife, and weekly sick benefits to you for disability. There, too, are Death Benefits up to \$10,000.00, for accidental death on the job payable to your wife, children, parents, brothers or sisters, when you die.

Whenever you or your family require medical, surgical or hospital care, then you or your family must elect to be covered by either Plan A or Plan B, but once you have selected a Plan, then you cannot switch to the other Plan for benefits relating to the same sickness, treatment or operation.

Also (a) the Health & Welfare Fund (Rule 12(11)) and the Pension Fund (Rule 4(K)) now waive contributions by you for a period of eleven (11) months while you are incapacitated by reason of non-occupational illness or injury, and (b) if you are laid off, then you and your family are entitled to benefits for sixty (60) days under Plan A even though delinquent in contributions to the Health & Welfare Fund (Rule 11(5)).

These plans go as far as we possibly can at this time. It is useless to promise you benefits which the Funds will be unable to pay, and, therefore the Trustees of the respective plans have designed them to give you the maximum benefits possible consistent with maintaining solvent and workable Funds.

Also, under the law, the Funds must be administered jointly by an equal number of Employer and Union representatives, and, therefore, neither one has the full say as to how the Funds shall be run or what benefits shall be paid. This must be done jointly by the Employer and Union Trustees. Only in the event of a deadlock among the Trustees does

the law provide for the appointment by the Federal Court of an impartial Trustee to break the deadlock.

The Trustees have the right to make changes in the plans from time to time which they believe are necessary to protect Employee-members or the Funds. Keep this in mind as you go over the rules and regulations set forth in this booklet.

Read the following pages—containing the Rules—carefully. Keep this booklet with you or in a safe handy place and see that members of your family who are eligible to participate in the Funds are familiar with the contents too.

Remember, too, that not only your Employer but also you must comply with the respective rules in order to receive the benefits which the Health & Welfare Plan and Pension Plan provide. One of the things required of you is that you become and remain a member of the Union in good standing as a condition of employment as required under the Collective Bargaining Agreement between your Employer and the Union, for otherwise you may be discharged and thus jeopardize your benefit standing for Health and Welfare Benefits and continuity of employment required for Pension Benefits.

You must make satisfactory arrangements with your Employer for making contributions to each of the Funds in the event you take a leave of absence. Should you or your Employer become delinquent in contributions to the Health & Welfare Fund, then you and your family must wait ninety days after the delinquency is cured before you and your family are again eligible for benefits; nor is your family eligible to death benefits if your death occurs within ninety days after any delinquency was paid. Toward the end of this letter is a summary of the eligibility requirements you must observe in order that you or your family may receive benefits from each Fund under the Collective Bargaining Agreement between your Employer and the Union, and this is followed by questions which are often asked and answers to the same. It is believed that these may be of help to you.

While delinquencies to the Health & Welfare Fund can be paid and you must wait ninety days thereafter until you are again eligible for benefits, nevertheless delinquency in payment to the Pension Fund affects the continuity of payments required to be made for or by you for twenty (20) consecutive, full years (Pension Rule 1A (4)).

The Trustees, as such, receive no compensation for serving the Funds. The affairs of the Funds have been regularly audited by certified public accountants. The Commissioner of Internal Revenue has ruled that our

Funds are exempt from Federal income taxation since they meet the requirements of the Internal Revenue Code, as amended. We have hired an outstanding firm of actuaries who counsel and advise us in all our planning.

Again, just a friendly reminder:

- (1) You are not eligible for Health & Welfare Benefits until you have been employed by a covered Employer for at least six consecutive months during which time the required contributions to the Health & Welfare Fund have been made.
- (2) You must have faithfully complied with all of the provisions required of you under the Collective Bargaining Agreement at all times.
- (3) You must have had paid into the Health & Welfare Fund the required contributions since January 1, 1953, and into the Pension Pund the required contributions since January 1, 1955, or from the date you became a covered Employee-member.
- (4) Your Health & Welfare Fund and Pension Fund payments must be made before the tenth of each month for the previous month.
- (5) If you or your Employer is delinquent in making payments to the Health & Welfare Fund and you have not complied with the Collective Bargaining Agreement, then you or your family must wait ninety days after curing such delinquency in order to be eligible for benefits.
- (6) If an Employee-member is injured on the job the Employer will continue to pay the required contributions until such Employee-member returns to work, provided, however, such contributions shall not be paid for a period of more than twelve (12) months.
- (7) If an Employee-member is absent because of illness or off-the-job injury and notifies the Employer of such absence, the Employer shall be required to make contributions for a period of four (4) weeks.
- (8) The Employee-member must pay the required contributions to the Health & Welfare Fund and the Pension Fund if he is off more than twelve (12) months due to injury or illness.

### QUESTIONS AND ANSWERS RELATING TO THE HEALTH AND WELFARE FUND

#### A. HOSPITAL AND SURGICAL CLAIMS

- 1. Q. If I use Dr. Simon's service for an operation do I have to pay any part of the doctor or hospital bills?
  - A. No. If you use Dr. Simon's service through the Clinic you do not pay any part of the doctor or hospital bills except for blood used in transfusions, etc.

- 2. Q. How do I make claims for hospital or surgical benefits if I use any other hospital or doctor?
  - A. If you use any other hospital or doctor do the following:
    - a. Request Physician's Report form from the Health & Welfare office and give it to your doctor to fill out.
  - b. Pay your doctor and hospital bill and present paid bills and Physician's Report to Dr. Simon's Clinic or call the Health & Welfare office for direct payment and present unpaid bills.
  - who incurred the bill, your ledger book number, home address and phone number. This information will speed the processing of the bills. You will be reimbursed within a week to ten days according to the schedule in the Health & Welfare booklet, if you are eligible for benefits, and if your claim was complete in its entirety when submitted. Incomplete claims require longer to process.
- 3. Q. Will the amount shown in the schedule be paid for surgical operation if a less expensive rate is obtained?
  - A. No. The Plan provides payment for ACTUAL FEES CHARGED, with a maximum benefit equal to the amount shown in the schedule.
- 4. Q. Am I entitled to be paid for office or house calls by a doctor other than from Dr. Simon?
  - A. No. You will have to pay for office calls and house calls if you do not use Dr. Simon's services, except for a house call where Dr. Simon is unable to send a doctor and his office authorizes you to call another doctor. Each call must be authorized by Dr. Simon's office to be eligible for refund.
- 5. Q. Must I report to Dr. Simon's office before going to any other doctor or hospital?
  - A. No. You must, however, present claim and your paid bills for allowable reimbursement within 30 days after discharge from the hospital.

#### B. THINGS TO REMEMBER ...

- 1. Q. How can I make sure that my Health & Welfare and Pension Fund payments are paid each month?
  - A. It is your responsibility to check with the Health & Welfare and Pension Office to see that your payment is included on the list that your Employer turns into the office each month.

- 2. Q. What happens if I change my employment and my new Employer has no collective bargaining agreement with the Union requiring him to make contributions to either the Health & Welfare Fund or Pension Fund?
  - A. Your benefits terminate when you cease working for a covered Employer.
- 3. Q. What happens if at a later date l again become employed by a covered Employer?
  - A. You are considered as a new Employee-member from the date that you were hired by the new covered Employer.
- 4. Q. What happens if I change my employment from one covered Employer to another covered Employer?
  - A. Then you are still covered provided there are no delinquencies between the time you have stopped working for one covered Employer and entered the employ of another covered Employer.
- 5. Q. How do I report on the ich list?
  - A. By notifying the Health & Welfare Office either by telephone: 738-2800, or by mail: 2 '0 South Ashland Boulevard, Chicago, Illinois 60607.
- 6. Q. When do the benefits start?
  - A. From the day that you notify the office or from the day that your letter is postmarked.
- 7. Q. Will I receive any sick benefit if I am off less than five (5) working days?
  - A. No. You will be paid \$60.00 per week sick benefit only if you are off five (5) full working days (Saturday and Sunday excluded). You will not receive any sick benefit for time off for less than five (5) working days.
- 8. Q. Will I receive any sick b nefit if I do not report until I go back to work?
  - A. No. You must report the first day of sickness or injury, and you will only be paid from the day that such sickness or injury was reported to the Health & Velfare Office.
- 9. Q. Must I report off of the sick lin?
  - A. Yes. You must report off the sick list the same day that you return to work.

- 10. Q. If I am off with the same illness or disability for a period of 24 months, am I entitled to collect fifty-two (52) weeks' sick benefit?
  - A. No. The maximum sick benefit allowed to any sick or disabled member from any one sickness or disability is twenty-six (26) weeks, but in no event shall more than twenty-six (26) weeks' benefits be allowed in any one twelve (12) month period.
- 11. Q. Am I covered for death benefit for accidental death on the job?
  - A. Yes. However if death is sustained by an Employee-member while engaged in his line of duty and resulting from injury suffered by him arising out of and in the course of his employment then double death benefits will be paid.

This double death benefit is in addition to any benefits payable under Workmen's Compensation or similar laws.

# QUESTIONS AND ANSWERS RELATING TO THE PENSION FUND FOR THOSE RETIRING ON AND AFTER JANUARY 1, 1969.

- 1. Q. Is there more than one kind of pension?
  - A. Yes. There is a Normal Retirement Pension and a Permanent Physical Disability Pension.
- 2. Q. What is the difference between the two?
  - A. Normal Retirement Pension applies to an Employee-member who is at least 57 years of age—normal retirement age—and has 20 years of covered service.

Permanent Physical Disability Pension applies to an Employeemember who is at least 45 years of age and has 15 years of covered service but "retires from active service because of a physical or mental condition which totally and permanently prevents him from engaging in any" gainful occupation or employment.

- 3. Q. When am I eligible for Normal Retirement Pension?
  - A. You are eligible for Normal Retirement Pension when you reach 57 years of age and have 20 consecutive years of unbroken covered service with a covered Employer who during that time has made contributions to the Fund on your behalf, and you have during that period complied with the terms of the Collective Bargaining Agreements.

- 4. Q. Can I qualify for Normal Retirement Pension before I am 57 years of age but have put in my 20 years of covered service?
  - A. No. You must be at least 57 years old to retire and you must have at least 20 years of covered service, whichever is later. EXAMPLE: If you have 20 years of covered service at age 55, then you must work until you are 57; but if you are 57 and have only 17 years of covered service, then you must work at least 3 more years until you have 20 years of covered service before you can qualify for pension.
- 5. Q. Who is eligible for Permanent Physical Disability Pension?
  - A. An Employee-member who is at least 45 years of age and has at least 15 consecutive years of unbroken covered service, and has during that period of time complied with the Collective Bargaining Agreement under which he worked, and who retires because of a physical or mental condition which wholly prevents him from engaging in any gainful employment or occupation, provided such disability has persisted for a period of 6 full consecutive calendar months.
- 6. Q. Suppose I am forced to retire because of some disability which does not totally incapacitate me, am I then entitled to a Permanent Physical Disability Pension?
  - A. No. See answer to Question No. 5.
- 7. Q. What is meant by "Covered Service," "Covered Employer" and "Covered Employee"?
  - A. "Covered Service" is employment by an Employer(s) who under a written Collective Bargaining Agreement with Local 705 is and has been obligated to and is making and has made contributions to the Fund in your behalf. He is called a "Covered Employer" and you are called a "Covered Employee" as long as you are employed by him and he makes contributions to the Fund. The period while you are so employed is called "Covered Service."
- 8. Q. When was the Fund established?
  - A. January 1, 1955.
- 9. Q. If I went to work for a Covered Employer before January 1, 1955, must I have 20 consecutive years of unbroken covered service after January 1, 1955 to qualify for pension?
  - A. No. You would get past service credit for the time you worked for an Employer prior to January 1, 1955 if on that date you

were and thereafter remained in his employ and he was a Covered Employer and made all contributions on your behalf thereafter.

FXAMPLE: On January 1, 1947, you went to work for an Employer and continued in his employ until January 1, 1967, and from January 1, 1955 to January 1, 1967 he made contributions to the Fund on your behalf pursuant to a written agreement with Local 705, then you would be given past service credits for 8 years prior to January 1, 1955 and 12 years thereafter, making 20 years of covered service.

- 10. Q. Suppose my Employer made contributions to the Fund and I paid my dues to Local 705, but my Employer had no written contract with Local 705—how would that affect my pension?
  - A. You would not be entitled to a pension unless your Employer not only contributed to the Fund but also had a written Collective Bargaining Agreement with Local 705 obligating him to contribute to the Fund and fixing the amount of his contributions.
- 11. Q. How much is the Normal Retirement Pension?
  - A. The Normal Retirement Pension is \$250.00 per month for life. However, if a pensioner dies before he has received 120 monthly pension payments and is survived by a wife to whom he was married at the time of his retirement, then she is entitled to monthly payments (See Question 12).
- 12. Q. If a Pensioner dies and is survived by a wife, does she receive any pension benefits?
  - A. If a qualified Pensioner dies before he has received 120 monthly payments of \$250.00 each (\$30,000) and is survived by a wife to whom he was married at the time of his retirement, then monthly payments of \$250.00 each are made to her until either a total of 120 monthly payments shall have been made since her husband's retirement, or she dies sooner.

EXAMPLE: A who is married to B retires on January 1, 1969, and receives his first monthly pension check on February 1, 1969. He dies on February 10, 1972, after having received 36 monthly payments of \$.50.00 each, leaving 84 monthly payments to be paid to B:

120 monthly payments of \$250,00 each ess 36 monthly payments of \$250,00 each (paid during A's lifetime) \$30,000 9,000

leaves 84 monthly payments of \$250.00 each ... \$21,000 (to be paid to B unless she dies before 120 monthly payments have been made by the Fund since her husband's retirement; then all payments cease)

### 13. Q. How much is the Permanent Physical Disability Pension?

A. The Permanent Physical Disability Pension payments—\$250.00 a month for life—are the same as the Normal Retirement Pension payments except if the disabled pensioner recovers, then he is not entitled to receive pension benefits until he reaches Normal Retirement Age 57 and has the required 20 years of covered service except that the period during which he was receiving Permanent Physical Disability Pension is counted as covered service and the amount of pension he received during that period is charged against the 120 monthly payments in the event that he dies and leaves a wife surviving him who is entitled to monthly pension benefits.

EXAMPLE 1: A becomes disabled and receives 36 monthly payments when he recovers and returns to work. Later he retires on Normal Retirement Pension but dies 48 months later. His widow would receive 36 monthly payments if she lives that long.

36 monthly Permanent Physical Disability payments to Husband 48 monthly Normal pension payments

84 monthly payments deducted from 120 leaves 36

EXAMPLE 2: A goes on Permanent Physical Disability Pension when he is 45 years of age and has 15 years of covered service. After being on Permanent Physical Disability Pension for 4 years he recovers and goes back to work. He is then 49 years of age and has 19 years of covered service—15 years before disability and 4 years while disabled—but he is not eligible for Normal Retirement Pension until he reaches age 57 and accrues 20 years of covered service in the meantime. If he goes on Permanent Physical Disability Pension at age 53 and has 15

years of covered service, then when he reaches Normal Reine ment Age 57 during the 4 years while on disability, nevertheless he lacks 1 year of covered service and must work another year for a Covered Employer before being eligible for Normal Pension.

- 14. Q. When do I receive my first Normal Retirement Pension check, assuming that I qualify therefor?
  - A. On the 1st of the month following your application for pension or retirement, whichever is the later.

EXAMPLE: You make an application for pension on February 10, 1969, but do not retire until March 1, 1969. Your first pension check will be paid to you on April 1, 1969. The same would apply if you retired on February 7, 1969, but did not make an application for pension before March 1, 1969.

- 15. Q. When do I receive my first pension check, assuming that I qualify for a Permanent Physical Disability Pension?
  - A. Permanent Physical Disability Pensions are paid on the 1st day of the calendar month following a period of 6 full continuous calendar months of disability or 30 days after written application for pension is made because of the foregoing, whichever is later. No Permanent Physical Disability Pension is paid for the first 6 months of disability.
- 16. Q. Suppose I am on Permanent Physical Disability Pension but recover so that I am able enough to work at some employment, how would that affect my pension?
  - A. Under the circumstances, as soon as you recover and are able to engage in a gainful occupation or employment, then you would not be entitled to further disability pension payments.
- 17. Q. How do I apply for a Normal Retirement pension?
  - A. Obtain from the Fund an Application for Pension Benefits within 30 days before you retire; fill out these forms very carefully, and return them to the Fund.
- 18. Q. May I make an application for pension before I retire?
  - A. Yes, but your pension does not go into effect until you actually retire. See answer to Q. 17.

- 19. Q. When must an application be made for total Permanent Physical Disability Pension?
  - A. An application for total Permanent Physical Disability Pension must be made to the Fund within 7 months after the disability originated; otherwise the applicant shall be deemed to have waived it and shall not be entitled to it.
- 20. Q. How does receiving a Permanent Physical Disability Pension affect the future benefit rights of a pensioner's widow?
  - A. When a pensioner recovers from the total disability for which he qualified for pension, then he must wait until he qualifies for normal pension before monthly payments will be resumed. However, in computing the balance of the 120 monthly payments to be paid to his surviving wife upon his death, all monthly payments made to him in his lifetime are added together, whether disability or normal payments, and subtracted from the 120 monthly payments, and she is entitled to the balance if she survives her husband and does not die before the aggregate 120 monthly payments have been made to her husband.
- 21. Q. Are there any other benefits under the Pension Plan besides pensions?
  - A. Yes. There is a \$1,000.00 funeral benefit payable upon the death of a Pensioner.
- 22. Q. Who administers the Pension Plan?
  - A. The Plan is administered by the Trustees, consisting of 3 Union and 3 Employer representatives. The decision of a majority of the Trustees is final in all matters relating to pensions.
- 23. Q. Who recommends the amount of and qualification for pension benefits and how is it determined?
  - A. The Collective Bargaining Agreement under which the Fund was established in 1955 provided that the "Trustees in consultation with actuaries . . . shall decide upon the type and nature of the pension (including eligible benefits, etc.) to be instituted" and the Trust Agreement provided that "The Trustees may employ such actuarial and other experts as they deem necessary for the proper formulation and operation of (the)

Pension Plan." The work of the actuary is to calculate risks, that is, determine how much money is needed in order to provide pension benefits and to make reasonably certain that the Fund will have enough money on hand to pay the benefits when they become due. One of the things which they take into consideration is "life expectancy"—which is the average number of years which an individual of a given age may expect to live and that is based upon statistics gathered and computed by the actuaries. Based upon the foregoing they make recommendations to the Trustees regarding pension benefits, the length of service necessary to qualify for benefits, funding, etc., and the Trustees, then acting upon the actuaries' recommendation, establish the amount of benefits and the conditions under which such benefits will be paid. This is also necessary in order to insure that the Fund will be federally tax exempt,

## 24. Q. What do you mean when you say the Plan is funded?

A. A funded pension is one which requires an Employer to make contributions while the Employee-member works, instead of after he retires. Your Employer is contributing to the Fund now so that the money needed to pay your pension will be there when you retire. This has several advantages for you. Most important is that your pension payments are assured, regardless of what may happen to your Employer after you retire. Another advantage is that the contributions earn income by being invested. Consequently, the money originally contributed grows. Without this income growth the Fund could not accumulate enough money to pay the \$250.00 monthly pensions provided by the Plan. Under an unfunded plan Employers contribute as the money is needed to pay pensions. It an Employer goes out of business there is no more money coming in to pay pensions to his retired Employees. And, even if contributions continue, there is no investment income, so pensions have to be smaller.

# 25. Q. What is the life expectancy of a pensioner after normal retirement and how much will he receive in pension payments?

A. The table below shows the average number of years a pensioner is expected to live after retirement (Average Life Expectancy) and the average total pension benefits it is expected that a pensioner will receive during his lifetime who retires at each age from 57 to 65.

Age of Retirement	Average Lafe Experiency	Average Total Pension Payments	
57		Unmarried	Married
58	another 21.14 years 20.35	\$63,420	\$65,100
59		61,050	62,880
60	19.58	58,740	60,720
61	18.81	56,430	58,590
62	18.05	54,150	56,520
63	17.30	51,900	54,480
64	16.57	49,710	52,560
65	. 15.84	47,520	50,640
	15.13	45,390	48,780

- 26. Q. Why are the average total pension payments higher for a married pensioner than for an unmarried pensioner?
  - A. The reason for the higher average for a married pensioner is that the Fund continues pension payments to a surviving widow if her husband dies before receiving 120 monthly payments. Since some retired members will die before receiving 120 monthly payments and if they are unmarried, no further payments are made, therefore, the average total payment to pensioners and their surviving widows are larger than the average total payments to an unmarried pensioner.
- 27. Q. Why must an Employee-member have 20 years of covered service to get a pension?
  - A. Pensions are paid for out of the Employer contributions for each covered Employee-member employed by him. If retirement were permitted before completion of 20 years of service there would be less money in the Fund and pensions would have to be considerably lower. The actuaries take into consideration the amount of money which a covered Employer has contributed to the Fund in 20 years and then determine how much more money the Fund will have to earn on that contribution in order to be able to make the monthly payments required under the Plan. By requiring 20 years of service at age 57 or later, the Fund is accumulating enough money to pay each member \$250.00 a month for life when he retires, or at least 120 monthly payments certain if he dies and is survived by a wife who lives at least 120 months after her husband has retired and qualified for pension.

- 28. Q. Who may change the Pension Plan?
  - A. The Pension Plan may only be changed by a majority vote of the Trustees.
- 29. Q. Who chooses the Trustees and how many are there?
  - A. The Taft-Hartley Act requires the Union and the Employers to be equally represented in the administration of the Fund and therefore the Trust Agreement provides that there shall be 6 Trustees, 3 of whom are Union Trustees appointed by Local 705, and the other 3 are Employer Trustees who are appointed by the Illinois Motor Truck Operators Association, Central Motor Freight Association, and Cartage Exchange of Chicago.
- 30. (). What is the Trust Agreement?
  - A. The Trust Agreement is an agreement which was entered into as of January 1, 1955, between Local 705, Illinois Motor Truck Operators Association, Central Motor Freight Association and the Cartage Exchange of Chicago on behalf of themselves and their members and other Employers and Fred M. Tiedt, H. E. Wood, Louis F. Peick (the then Union Trustees) and John Viking, Thomas O. Smith and George W. Johnson (the then Employer Trustees), to establish a Trust Fund for the purpose of providing retirement benefits for Employees. It contemplated: "Trustees (who) in consultation with actuaries and/or pension specialists, shall administer such Fund and shall decide upon the type and nature of Pension Plan (including eligibility, benefits, etc.) to be instituted." This met the requirements of the federal law which regulated the conditions set forth by Congress for permitted industrial welfare funds and exemptions from federal taxation.
- 31. Q. Is my pension affected by the amount of Social Security benefits that I may receive?
  - A. No. Pension benefits are in addition to any Social Security benchts which you may receive.
- 32. Q. How much will I get in Social Security?
  - A. Your monthly Social Security will depend on your average carnings taxed for Social Security and your age when your Social Security benefits begin. Social Security pays monthly benefits for life. Full benefits are available at age 65 and reduced benefits as early as age 62. An Employee member's wife

also gets Social Security even though she may never have worked. Here are some typical monthly Social Security benefits under the current law.

Average monthly taxed puy	For you at 62	For you	Couple both 62	Couple
\$400	\$123	\$154		both 65
500	142	178	\$181	\$230
600	163	204	209	266
650	174	218	240 253	306

Because earnings taxed for Social Security have been lower in the past, average taxed pay will not reach the higher levels for many years. Monthly payments to members retiring in 1969 are about \$130 if benefits begin at age 62, about \$160 beginning at age 65, about \$190 for a couple both age 62, and about \$240 for a couple both age 65 when benefits begin.

- 33. Q. If I take another job after I retire, will I lose my pension?
  - A. Yes, you must not engage directly or indirectly in any capacity whatsoever in the trucking or hauling industry without written dispensation from the Trustees, which may be issued only upon your written application therefor.
- 34. Q. If I am a qualified Pensioner, must I do anything else to continue receiving pension payments?
  - A. Yes. You must always keep the Fund informed of your address. If your pension check is returned because of the wrong address, then payments will be stopped. If the Fund does not receive the correct address within I year, then you will lose all rights to past pension payments.
- 35. Q. If I cannot work because of accident or sickness, will that affect my pension?
  - A. If your sickness or injury is occupational, your Employer is required to continue to make contributions for 1 year. Thereafter, you must continue to make your own contributions to the Fund in order to remain in good standing so long as you can not work. However, if your sickness is not occupational, then your Employer must contribute to the Pension Fund for 4 weeks, and the Fund will waive contributions for the next 11 months or during your incapacity, whichever is sooner. Thereafter, if you are still incapacitated, whether resulting from

occupational or non occupational accident or illness, you must continue to make your own contributions to the Fund as a condition of continuing eligibility until you return to work. However, the time during which you are off because of illness or accident will count toward your covered service.

- 36. Q. Who makes contributions to the Fund when I am on leave of absence?
  - A. When you take a leave of absence, then you must make satisfactory arrangements with your Employer to pay the weekly payments to the Fund, and he then must make the payment to the Fund during your leave of absence. You must make sure that he does make the payments to the Fund on time; otherwise your pension will be jeopardized.
- 37. Q. If I am laid off, who must make contributions to the Fund during my absence from work?
  - A. You must make contributions in the same monthly amount as that required of your Employer during any period of layoff as a continued condition of your eligibility for pension benefits, and failure to do so breaks the 20 consecutive years of unbroken covered service and contributions.
- 38. Q. What happens to my pension rights if I enter Military Service?
  - A. Your covered service is not broken during the period of time that you are in Military Service, provided that you were employed by a Covered Employer immediately before entering Military Service and qualified for and entered the reemployment of such Covered Employer within the allowable time provided by law upon your discharge from Military Service, or you entered the employ of another Covered Employer immediately upon your discharge from Military Service.
- 39. Q. Does the Fund provide benefits for Employee-members represented by Teamster Locals other than Local 705, and why?
  - A. Yes. The Fund also provides benefits for Employee-members represented by Teamster Locals 301, 704 and 801, respectively, because their Employers have become obligated under a written Collective Bargaining Agreement to make contributions to the Fund, and who have, with the written consent of the Trustees of the Fund, accepted and agreed to be bound by the Trust Agreement and the Rules and Regulations of the Fund as amended from time to time.

- 40. Q. May the Fund provide benefits for Employee-members represented by Teamster Locals other than Teamster Locals 705, 301, 704 and 801?
  - A. No, because Employers of Employee-members represented by other Teamster Local Unions do not make contributions to the Fund under a written agreement with a Teamster Local Union to which their Employee-members belong. The Fund may not use the contributions received from Employers of Employee-members represented by Locals 705, 301, 704 and 801 for purposes of supplying benefits to Employee-members represented by locals whose Employers make no contribution to the Fund.
- 41. Q. May my Employer deduct from my wages the contributions which he makes to the Fund on my behalf?
  - A. No. The Employer is obligated to make the contributions to the Fund under his written Agreement with Local 705, and this contribution has nothing to do with your wages and should not be deducted by him. Any deduction of contributions by an Employer should be immediately reported to Local 705, except whenever an Employee-member takes a leave of absence he may arrange with his Employer to make the weekly contributions to the Fund and deduct them from the Employee's wages.
- 42. Q. To whom are pension contributions made and may any of the contributions be returned to the Employer or given to the Union?
  - A. No. Pension contributions are made directly to the Pension Fund and belong solely to it.
- 43. O. How does changing my job affect my pension rights?
  - A. If you go to work for any one who is not a Covered Employer, then you break your continuity of service and are no longer qualified for pension.
- 44. Q. What happens if my covered service is broken?
  - A. You lose all service credits and are no longer covered by the Plan. A break also occurs when no payments are made by you to the Fund when required under the Plan. See Rule 4—Contributions.

### 45. Q. Can the Plan be changed?

A. Yes. The Trustees have authority to change the Plan. However, no change will affect unfavorably any pensioner unless the change is required to obtain the approval of the Plan by the Treasury Department or meet the payments due. The Plan has been set up on the sound advice of our actuaries and it is continuously reviewed by them and by the Trustees, and it is unlikely that any member will ever be adversely affected.

## 46. Q. Are the above questions and answers the Plan and is there anything else I must remember?

A. The above questions and answers are merely intended as an explanation of the Plan. The Plan appears at the end of this booklet. Remember, also, that you must be in a Covered Employee status at the time of your retirement. Remember, too, that if you are seeking Permanent Physical Disability Pension Benefits before you are age 62, then you must have a Certificate of Social Security Insurance Award for Disability Benefits.

We shall strive to better these plans as the law and economic conditions may allow.

Fraternally yours,

LOUIS F. PEICK, Secretary-Treasurer

# LOCAL 705 INTERNATIONAL BROTHERHOOD OF TEAMSTERS



### PENSION TRUST FUND

Union Trustees

Albert Taphorn Louis F. Peick

Frank Kratky

Employer Trustees

Roy Pride

Howard Willett, Jr.
Eugene McCarron

### RULES AND REGULATIONS

#### RULE 1

Eligibility

### A. NORMAL RETIREMENT

An Employee-member shall be eligible for pension, subject to the conditions hereinafter contained, who:

- (1) Attains Normal Retirement Age hitty-seven (57);
- (2) Retires from active service in the craft;
- (3) Has for twenty (20) consecutive, continuous and uninterrupted years immediately preceding normal retirement age, or retirement, whichever occurs last: (a) been employed by a Covered Employer, that is an Employer who during such period of time has been a signatory to a Collective Bargaining Agreement (Agreement) with Local Union No. 705 International Brotherhood of Teamsters (Union) covering the said Employee-member, and (b) as an Employee of such Covered Employer has faithfully complied with and performed all the conditions required of him under said Agreement(s);
- (4) Has or had paid for him continually since January 1, 1955, if then employed by a Covered Employer; if not, then continually

- since the beginning of employment by a Covered Employer, all contributions to the Pension Fund as required under the Agreements between said Employer and the Union; and
- (5) Has made written application to the Fund in the form approved by them for pension payments within thirty days from the date upon which he intends to retire.

#### B. PERMANENT PHYSICAL DISABILITY

- (1) An Employee-member who meets all the requirements of Rule 1A except that he has attained only forty-five (45) years of age and has only fifteen (15) consecutive, continuous and uninterrupted years of employment and faithful compliance with the conditions of the Agreement(s) as defined in Rule 1A, and who retires from active service because of a physical or mental condition which wholly and permanently prevents him from engaging in any remunerative occupation or employment, shall be entitled to a pension on the first day of the calendar month following a period of disability of six (6) full and continuous calendar months, or thirty (30) days after his written application for pension payments because of the foregoing, whichever is later. Written application for Permanent Disability Pension must be made to the Fund within seven (7) months after the disability shall have originated, otherwise the applicant shall not be entitled to pension benefits.
- (2) The Fund shall require, as proof of disability, evidence satisfactory to the Fund of the determination by the Social Security Administration that the Employee member is entitled to a Disability Insurance Benefit under the Federal Social Security Act, or if such determination is not available to the Employeemember because he is receiving Social Security Old Age Retirement Benefits, then he shall submit to a physical examination as directed by the Fund. The Fund may also require such additional evidence as they deem necessary.

#### C. DEATH BENEFIT

(1) A death benefit of one thousand dollars (\$1,000.00) shall be paid upon the actual and not presumptive death of an Employee-member who has received or was entitled to receive pension payments immediately prior to his death. This death benefit shall be for the purpose of providing a decent burial for such deceased Employee-member.

- (2) Due proof of actual and not presumptive death, accompanied by a certified copy of a death certificate and an undertaker's bill, shall be made to the Fund, who may then allocate or pay any part of the death benefit to the following:
  - (a) The undertaker in charge of the interment of the deceased Employee-member, provided, however, that in the event a paid funeral bill is presented to the Fund, then the Fund may in their discretion reimburse the party who paid the funeral bill, but in no event in excess of the death benefit, and the balance remaining after the payment of such funeral expense shall be paid to the following survivors in the order of their designation:
    - (1) Widow
    - (2) Children, including legally adopted children
    - (3) Parents
    - (4) Brothers and sisters
  - (b) In the event an Employee-member dies and leaves neither wife, children, parents, brothers nor sisters surviving him, then no death benefits shall be paid but the Fund shall have charge of the funeral and pay reasonable expenses therefor not in excess of the maximum death benefit and the Fund shall be entitled to benefits accruing from the Social Security Administration.
- (c) No beneficiary designation by will or otherwise shall be binding upon the Fund. The Fund shall be discharged from all liability or obligation whenever it makes payment of the aggregate death benefit to any one or to all of the above-named or to the executor or administrator of the deceased Employee-member's estate if he is survived by any of the above-listed relatives.

#### RULE 2

### Pension Payments

- A. EFFECTIVE DATES AND MONTHLY PENSION PAYMENTS
  - (1) Retirement prior to April 1, 1965

An Employee-member who retired and qualified for pension before April 1, 1965, shall be paid one hundred fifty dollars (\$150.00) per month during his lifetime and period of entitlement, commencing with the monthly payment to be made December 1, 1965, and upon the death of said Employee-member

before he has received one hundred twenty (120) monthly payments, and is survived by a wife to whom he was married at the time of his retirement, then monthly payments shall be continued to be made to her until either an aggregate of one hundred twenty (120) monthly payments shall have been made since her husband's retirement, or she dies, whichever is the earlier.

(2) Retirement on and after April 1, 1965

An Employee-member who retires and qualifies for pension on and after April 1, 1965, shall be paid during his lifetime and the period of his entitlement the sum of \$250.00 per month during the first sixty (60) months of his entitlement, and \$150.00 per month thereafter, and upon the death of an Employee-member before he has received one hundred twenty (120) monthly payments and is survived by a wife to whom he was married at the time of his retirement, then monthly payments shall continue to be made to her until either an aggregate of one hundred twenty (120) monthly payments shall have been made since her husband's retirement, or she dies, whichever is the earlier.

For Example: A retires on April 1, 1965, at which time he was married to B. A dies on April 1, 1967, after having received twenty-three (23) monthly pension payments of \$250.00 each. B survives him. B is entitled to receive thirty-seven (37) monthly payments—60 minus 23 (which her husband had received)—of \$250.00 each, and thereafter sixty (60) monthly payments of \$150.00 each. A dies after he has received sixty (60) monthly pension payments of \$250.00 each and ten (10) monthly payments of \$150.00 each, and B survives him. B is entitled to receive fifty (50) monthly payments—120 minus 70 (which her husband had received)—of \$150.00 each. However, if B should die before 120 payments have been made since her husband's retirement, then payments cease.

(3) An Employee-member who retires and qualifies for pension on and after January 1, 1969, shall be entitled to a monthly pension of \$250.00 per month for life, and if he dies before receiving one hundred twenty (120) monthly payments and is survived by a wife to whom he was married at the time of his retirement, then monthly payments shall continue to be made to her until either an aggregate of one hundred twenty (120) monthly payments shall have been made since her husband's retirement, or she dies, whichever is the earlier.

#### B. EFFECTIVE DATE OF RULES

These rules, as amended, shall become effective January 1, 1969, but Employee-members who retired prior to that date shall be governed by the rules in effect at the time of their retirement except in so far as amended in RULE 2A herein relating to monthly pension payments.

#### C. No Assignment or Attachment of Benefits

Benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for support of a spouse or former spouse or for any relative of the Employee-member prior to actually being received by the person entitled to the benefit under the terms of this Plan, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits hereunder shall be void. The Trust Fund shall not in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of any person entitled to benefits hereunder.

#### D. FAILURE TO KEEP FUND ADVISED OF CHANGE OF ADDRESS

If a pension check is returned because of a wrong address, then payments will be stopped, and if the Fund does not receive the correct address of a Pensioner within one (1) year, then he will lose all rights to past pension payments.

#### RULE 3

### Revision and Stoppage of Payments

#### A. REVISION

All pension payments and eligibility requirements shall be subject to modification, extension, revision, curtailment, or other conditions which the Trustees may impose or promulgate from time to time, provided that such conditions shall be uniform in application to all eligible Employee-members or pensioners similarly circumstanced. The Trustees may, from time to time, establish other and different plans and rules affecting Employee-members who may be employed by a single Employer or group of Employers when circumstances in the sole discretion of the Trustees warrant such action.

#### B. STOPPAGE OF PENSION PAYMENTS

No pension shall be paid for any period when a pensioner is engaged, directly or indirectly, individually or as an Employee, associate, member, partner or officer of or in any firm or corporation engaged in the trucking or hauling industry, and the Trustees may:

- From time to time designate other employments in which pensioners may not engage as a condition of continuing eligibility to pension entitlement, and
- (2) Grant dispensation to pensioners (both the dispensation and application therefor must be in writing) authorizing him to work for a trucker or hauler without stoppage of pension payments, but such dispensation shall not authorize employment or engagements similar to that performed by the pensioner at the time of his retirement or immediately preceding thereto, nor which in any way may compete or conflict with the business or interests of any Employer who at any time employed such pensioner prior to retirement when such Employer was a signatory to a Collective Bargaining Agreement with the Union covering the pensioner and pursuant thereto made contributions to the Fund.
- (3) Terminate Pension Payments if an Employee-member has retired because of Permanent Physical Disability, as provided in RULE 1B and, prior to his attainment of age fifty-seven (57), the Trustees determine that he has recovered from such disability then the retired Employee-member shall no longer be entitled to a pension and his pension payments shall cease. In such event, the Employee-member shall only be entitled to a pension when he attains age fifty-seven (57) if he meets the requirements of RULE 1A, provided, however, that in determining whether he meets such requirements, the period during which he was on Permanent Physical Disability pension under RULE 1B shall be considered as a consecutive, continuous and uninterrupted period of employment by a Covered Employer.

#### RULE 4

#### Contributions

The Employer payments to the Pension Fund shall be as follows:

#### A. AMOUNT

The amount (required under a Collective Bar anima ment between the Employer and the Union) per Employee member per

week, shall be paid for each regular Employee-member covered by such Agreement for any week in which such Employee-member performs any services for the Employer, even when such services are not performed under the terms of such Agreement.

### B. REPLACEMENTS

Payment shall be made on replacements for absentee Employeemembers for the weeks worked by such replacements at a rate equal to twenty per cent (20%) per day of the aforesaid weekly payment.

### C. Non-Occupational Illness or Injury

If an Employee-member is absent because of non-occupational illness or injury, the Employer shall pay the required payment for a period of four (4) weeks.

### D. OCCUPATIONAL ILLNESS OR INJURY

If an Employee-member is absent because of occupational illness or injury, the Employer shall pay the required payment for a period of twelve (12) months.

### E. DURING NEGOTIATIONS OF NEW CONTRACT

The obligation to make the above payments shall continue during periods when a new Collective Bargaining Agreement is being negotiated.

### F. LEAVES OF ABSENCE

All leaves of absence, when granted by the Employer, in addition to the requirements of the parties, shall be conditioned upon the Employer and the Employee-member making satisfactory arrangements for paying the weekly payment to the Fund, and at all times the payment shall be made by the Employer for the period of such granted leave of absence.

### G. EMPLOYEE-MEMBER PAYMENTS

Whenever an Employer is not obligated to make payment to the Fund for an Employee-member, then the Employee-member shall make the required payment.

### H. DATE OF CONTRIBUTION PAYMENTS

Payments are due not later than the 10th of the month immediately following the Employer's payroll period based on the number of Saturdays in the previous month. For example, a four weeks' payment will

be due the Pension Fund for those months which have four Saturdays; and a five weeks' payment will be due the Pension Fund for those months which have five Saturdays.

### I. INELIGIBILITY FOR NON-CONTRIBUTIONS

If payment is not received by the tenth day of the month, the Employee-member will not be eligible to receive any benefits.

### J. PLACE OF PAYMENT

All payments required to be made to the Fund shall be made payable to Local 705 LB.T. Pension Trust Fund, 220 South Ashland Boulevard, Chicago, Illinois 60607, or at such other address as the Fund may from time to time, in writing, direct, and shall be accompanied by an original copy of remittance in the form approved by the Fund.

### K. WAIVER OF CONTRIBUTIONS

The Fund will waive contributions during an Employee-member's incapacity to work by reason of non-occupational injury or illness, evidence thereof being made to the satisfaction of the Fund, provided, however, that such waiver shall not be for a period in excess of eleven (11) months and shall exclude the first four (4) weeks inasmuch as it is contemplated that the latter will be paid by the Employer.

#### RULE 5

### Coverage-Local Unions 301, 704 and 801 I. B. of T.

These rules shall apply to Employee-members represented by International Brotherhood of Teamsters Local Unions 301, 704, and 801, respectively, whose Employers have become obligated under a Collective Bargaining Agreement to make contributions to the Pension Fund and who have, with the written consent of the Trustees, accepted and agreed to be bound by the Trust Agreement and the rules and regulations, as amended from time to time, in which event such respective locals shall be substituted for Local 705 wherever the same appears herein and the context so admits. Whenever Local 705 International Brotherhood of Teamsters, absorbs the members of another International Brotherhood of Teamsters Local Union, then such members' employment, for purposes of pension entitlement, shall be reckoned from the time they

became members of the absorbed local, provided, nevertheless, that they otherwise comply with, qualify, and are eligible for pension under then existing rules, provided, nevertheless, that this provision shall be applied prospectively from the effective date hereof, but not retroactively.

#### RULE 6

### Saving Clause

### A. CONSTRUCTION

These rules shall not be deemed an amendment or modification of the Trust Agreement and shall be so construed, interpreted and applied so as not: (1) to be incompatible or in conflict with the Trust Agreement, or (2) invalid under any applicable law, or (3) to impair any preferred treatment or disqualify any exempt status which the Fund may enjoy under the Internal Revenue Code as amended.

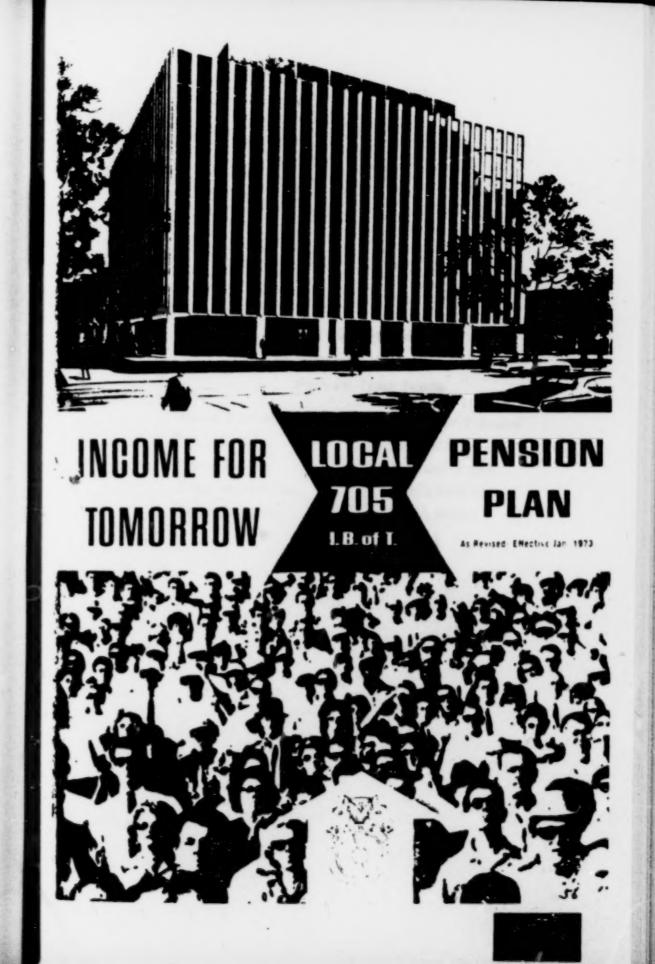
### B. INVALIDITY OF ANY PROVISION

If any provision of these rules or the application thereof to any persons or circumstances shall be adjudged invalid, then the remainder of the rules and the application to persons and circumstances other than those to which it is held invalid shall not be affected thereby. The Trustees may suspend the operation of any provision adjudged invalid or inoperative during the period of its invalidity and substitute in its place and stead a provision which will meet the objections to such invalidity and which will accord with the intent and purpose of the invalidated provision if that can be done legally.

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### Exhibit 1F 1973 Local 705 Pension Plan Booklet

(See Opposite) 🐷



### Local 705 International Brotherhood of Teamsters Pension Trust Fund

Union Trustees Employer Trustees

Louis F. Peick Eugene McCarron

Frank Kratky Howard Willett

Peter Janopoulos Ralph Niedert

Bruno Fillipini Frank Bridge

### INCOME FOR YOUR RETIREMENT ACTIVITIES

Retired employees of contributing employers received their first checks from our pension fund in 1955. At that time our pension plan paid \$75 a month for life. An employee qualified by working until age 65 and completing 20 continuous years of service. The plan provided only for normal retirement. There have been many improvements since those first checks were mailed.

Normal retirement age has been lowered twice—first to 62, and then all the way down to 57. Recently a vested pension was added so an employee can receive income from the plan at 65 even if he leaves covered employment long before retirement age.

Disability protection began in 1962. The first step was to allow a disabled employee to contribute for himself until he qualified for a normal pension at 62. In 1963 a disability pension was added to the plan. A participant who became totally and permanently disabled after age 55 and 15 years of service qualified for this new pension. He no longer had to contribute and wait until age 62 for his monthly payments. Later the age requirement was lowered to 45, and recently it was eliminated altogether.

Survivor protection started in 1963. In that year a cash benefit for funeral expenses was added to the plan. Later on, protection was extended to include monthly income for an employee's eligible spouse or children if he died after eligibility for normal retirement and before receiving his pension for ten years.

Pension amounts have increased a number of times. Starting with 1971 a pensioner can get as much as \$400 a month for life--quite an improvement over the \$75 pension offered in 1955.

This booklet describes the highlights of your Local 705 International Brotherhood of Teamsters Pension Plan as amended through January 1, 1973. The plan covers truck drivers, oil drivers and platform workers, represented by Local 705, and, where applicable also Local 301, of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

All benefits from the Local 705 pension plan are in addition to social security benefits. To help you estimate your total income for your retirement activities this booklet also includes information about social security.

#### Normal retirement

You are eligible for normal retirement after you reach age 57 and have 20 consecutive years of uninterrupted service. The amount of your normal pension depends on your age when you retire from covered employment.

Age at Retirement	Monthly Pension
57	\$250
58	300
59	350
60 or over	400

Monthly payments begin at retirement and continue as long as you live—even longer in some cases, as described later on. You receive the largest monthly amount if you wait until age 60 to retire, but you receive more monthly payments over your lifetime if you retire sooner.

### Vested pension

If you leave covered employment before age 57, but after 20 years of service, and do not work in the craft afterwards, you are entitled to a vested pension of:

### \$250 a month

when you reach 65. To collect your pension, ask the administrator for a pension eligibility notice when you leave. Then, no sooner than six months before your 65th birthday, send in your application and your eligibility notice. Monthly payments will start after age 65 and after the trustees have your application. Anyone who fails to apply before age 70 loses his pension rights. See official pension plan 2.03.

If you receive a vested pension, you do not qualify for survivor protection or other Local 705 post-retirement benefits.

### Disability retirement

You qualify for a disability pension if you have to stop working because of total and permanent disability after 15 years of service. The plan pays:

\$250 a month

starting 26 weeks after you become disabled, or 30 days after you apply, if later. The health and welfare plan pays sick benefits during the early stages of disability.

### Survivor protection

Your pension plan includes survivor protection during employment after age 57 and 20 continuous years of service, and also during normal retirement or disability retirement. Here are the survivor benefits the plan offers:

Ten-year-certain pension. If you should die after meeting the requirements for a normal pension—age 57 and 20 years of service—but before you actually retire, your eligible spouse or children will receive your pension for ten full years.

When you retire, your normal or disability pension carries with it a ten-year-certain guarantee. This means that you will receive monthly payments for the rest of your life, no matter how long you live. However, if you should die before receiving 120 monthly payments—or payments for ten years—your pension will be paid to your eligible spouse or children for the remainder of the ten years.

Your spouse will be eligible for your pension if married to you for at least one year on your last day of employment. If you leave no eligible spouse, or if your spouse dies before your pension has been paid for the full ten years, then your dependent children may receive your checks for the remainder of the ten years. A child qualifies while unmarried and under 18, or under 23 if a full-time student at an accredited college or university. If two or more are eligible, they share the monthly amount.

\$1,000 in cash. If you die during employment after age 57 and 20 continuous years of service, or during normal or disability retirement, the pension plan pays up to \$1,000 in cash for funeral expenses. Your spouse, children, parents, or brothers and sisters receive any part of the \$1,000 which is left over.

The Local 705 health and welfare plan also offers survivor benefits. In case of your death during employment (if you are eligible for a normal retirement pension), your eligible

survive may choose whether benefits are to be paid under the pension plan or under the health and welfare plan.

### Figuring your service

In general, service means your last period of continuous uninterrupted employment in a covered position with one or a succession of employers having a bargaining agreement with this union. Of course all required contributions to the pension fund must have been made for you since the plan began in 1955.

In certain situations employment while you were represented by another union also counts as service. For example, if you worked for an employer who contributed to another pension fund of the International Brotherhood of Teamsters or Chicago Truck Drivers Union (Independent), you receive credit for service under the other pension plan if:

- your employer's business was acquired by an employer having a bargaining agreement with your present union,
- your employer immediately began contributing to the Local 705 pension plan for you.

Ordinarily if employment and contributions stop you lose your service and begin over again when they resume. However, after January 1, 1970, twice during your lifetime the trustees may approve an application for reinstatement and restore the service you had when employment and contributions stopped, providing the total breaks in service and contributions do not exceed 24 months (2 years). They may do so only if:

- contributions stopped because of a layoff or other reason beyond your control; such as illness or military service—but not discharge for just cause or receipt of vested pension certificate of eligibility
- service and contributions begin again within less than two years and continue for at least three more years (or six months in case of death or disability)
- you apply for reinstatement within 90 days after completing the additional three years.

### What social security can add

Social security pays full benefits upon retirement at age 65, reduced retirement benefits after 62, and disability

and survivors benefits at any age. Benefits are based on your average taxed pay—that part of your earnings which is taxed under social security law. A wife receives benefits based on her husband's earnings. Or, if she has worked under social security herself she gets her own benefit if larger.

The table gives examples of benefits under the law as amended in 1972, depending on averaged taxed pay and age when benefits begin. However, because of lower ceilings on taxable pay in the past, only those who retire far in the future can attain the higher averages. The maximum average taxed pay for people who retire at 65 in 1973 is about \$520, and the maximum benefit about \$275.

#### MONTHLY SOCIAL SECURITY BENEFIT

Average	If Benefits Start at		For Couple
Taxed Pay	Age 02	Age 65	Both 65
\$ 400	\$186	\$233	\$350
500	215	269	404
600	247	309	464
700	274	342	513
800	291	364	546
900	307	384	576
1,000	323	404	606

Social security disability benefits are figured like retirement benefits that start at 65. Payments begin after five months of disability.

In case of your death, these dependents may receive survivor benefits:

- your family until your children reach age 18 (22 for fulltime students) or marry
- your widow or widower after age 60, or after age 50 if disabled.

Benefits for your family depend on your average taxed pay, the number of individuals eligible for benefits, age, sex, and other considerations. The current maximum benefit for the family of a person who was born before 1930 is about \$500 a month.

### Final facts about your Local 705 pension plan

Contributions. The benefits described in this booklet are available only if your employer has made all required con-

tributions to the pension fund—or else you have done so yourself where provided in the plan. Pension contributions must be made before the tenth of each month for the previous month.

If you are injured on the job your employer will continue to pay the required contributions until you return to work, but not longer than 12 months. If you are absent because of illness or an off-the-job injury, and you notify your employer, then your employer is required to contribute for you for up to four weeks. To keep your coverage after you have been off for 12 months, you must pay the required contributions yourself during your remaining period of illness.

Generally your employer contributes for you if you are granted a leave of absence, but it is your responsibility to work out the arrangements with your employer.

### Administrator, Trustees and Appeals:

All questions or claims concerning eligibility or benefits, or interpretation of the pension plan should be directed to:

Louis F. Peick. Administrator Local 705, I. B. of T. Pension Fund 300 South Ashland Boulevard Chicago, Illinois 60607

After you have received an answer from the administrator you have ten (10) days to request that the trustees review that answer. The request must be made in writing to the administrator, if you ask to appear before the trustees you will then receive a notice when and where the trustees will consider your appeal and if you do not request a review within ten (10) days after receipt of the administrator's answer (or within an extension allowed by the administrator within the 10-day period), that decision will be final and binding.

Official rules and regulations. This booklet describes the main features of your plan. Your actual benefits will be determined in accordance with the official pension plan which appears on the following pages. Please read the plan carefully and pay particular attention to the eligibility requirements of 2.01 through 2.07 and the appeal procedures in 5.01 through 5.03.

We shall strive to better these plans as the law and economic conditions may allow.

Fraternally yours, LOUIS F. PEICK, Secretary-Treasurer

### LOCAL 705 INTERNATIONAL BROTHERHOOD OF TEAMSTERS PENSION TRUST FUND PENSION PLAN AS AMENDED TO JANUARY 1, 1973

#### 1 DEFINITIONS

- 1.01 Trust Agreement means the Agreement and Declaration of Trust dated January 1, 1955, between representatives of the Employer and the Union, as amended to date and hereafter.
- 1.02 Pension Fund means the Local 705 International Brotherhood of Teamsters Pension Fund established by the trust agreement which includes the monies or other things of value which comprise the trust fund.
- and their successors who are appointed pursuant to the trust agreement. The trustees in their collective capacity shall be known as the Board of Trustees of the Local 705 International Brotherhood of Teamsters Pension Fund and may conduct the business of the pension fund and execute all instruments in that name.
- 1.04 Union means Truck Drivers, Oil Drivers, Filling Station and Platform Workers, Local 705, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and, where applicable, Local 301, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and such other labor organizations as the trustees approve in writing.
- 1.05 Employer means one or more individuals, partner-ships, associations, corporations, or legal representatives of every nature which now or hereafter have a collective bargaining agreement with the Union, and who agree in writing to be bound by the trust agreement; and such other employers as are approved in writing by the trustees.
- 1.06 Employee means (a) an individual employed by the Employer in a bargaining unit represented by the Union for whom the Employer is obligated to contribute to the pension fund. For purposes of credit for "past service" it shall in-

clude periods of such employment preceding the date when the Employer became so obligated; (b) employees of the pension fund; and (c) employees and officers of the Union.

- 1.07 Pensioner means a retired employee who is receiving a benefit under the pension plan.
- 1.08 Dependent child or children means one or more living unmarried natural or legally adopted children of the employee or pensioner under the age of 18, or under the age of 23 for a child who is attending an accredited college or university on a full time basis, and only for such period of time as each child meets each of these requirements. Retarded children are also covered to age 23 if attending a school for retarded children.
- 1.09 Pension Plan means this written detailed basis for the payment of benefits, or as amended thereafter.
- 1.10 Retires or Retirement means voluntary or involuntary (except by death) permanent termination of employment with any Employer.
- 1.11 Disability means a physical or mental condition which wholly and permanently prevents an employee from engaging in any remunerative occupation or employment.
- 1.12 Administrator means Louis F. Peick, and his successors, designated by the trustees to act as executive administrative officer of the pension fund.

### 2 ELIGIBILITY

- 2.01 Normal Retirement. An employee is eligible for a normal retirement pension if he meets all of the following conditions:
- (a) He retires after attaining normal retirement age (57).
- (b) He has been an employee of an Employer for at least 20 consecutive, continuous and uninterrupted years immediately preceding retirement, subject to the provisions of 2.05.
- (c) Contributions on his behalf have been continually received by the pension fund since January 1, 1955, if then an employee of an Employer, or if not, then since

- the beginning as an employee of an Employer, subject to the provisions of 2.05.
- (d) He makes written application to the pension fund (in the form approved by the trustees) for normal retirement pension within 30 days of the date he intends to retire, or claim normal retirement benefits.
- 2.02 Disability Retirement. (a) An employee is eligible for a disability retirement pension if he meets all of the following conditions:
  - (1) He has been an employee of an Employer for at least 15 consecutive, continuous and uninterrupted years immediately preceding the commencement of his disability, subject to the provisions of 2.05.
  - (2) Contributions on his behalf have been continually received by the pension fund since January 1, 1955, if then an employee of an Employer, or if not, then since the beginning as an employee of an Employer, subject to the provisions of 2.05.
- (3) He retires because of a disability, and after retirement that disability continues for a period of at least 26 consecutive weeks.
- (4) He makes written application to the pension fund (in the form approved by the trustees) for a disability retirement pension within 7 months after his disability commenced.
- (b) The employee shall furnish the trustees as proof of disability evidence satisfactory to them from the Social Security Administration that the employee is entitled to a disability insurance benefit under the federal Social Security Act. If such proof is not available to the employee, the trustees may in their sole discretion require the employee to submit to a physical or mental examination and may require the employee to furnish additional proof as they deem appropriate. The trustees' decision whether the employee is disabled is final and binding on the employee and all others.
- (c) No disability pension shall be due or payable to or for an employee who has either not retired, or who has retired because of a disability but who dies before he has met the requirements of both \$\mathbb{1}2.02(a)\$ (3) and (4).

- 2.03 Vesting. (a) An employee not otherwise eligible for a pension who retires after July 1, 1971, and meets all of the requirements of \$2.01(b) and (c) and \$3.03, is eligible to receive a pension beginning on the first day of the month next following his 65th birthday, or following the date his application is received by the pension fund, whichever is the later. Spouse and dependent children of an employee who retires under these circumstances are not entitled to benefits for the spouse and dependent children.
- (b) At the time the employee retires, he shall request that the pension fund (in the form approved by the trustees) issue him a certificate of eligibility for a vested pension which certificate will be in the form approved by the trustees from time to time.
- (c) Application for receipt of the pension benefit shall be made to the administrator (in the form approved by the trustees and in accordance with ¶3.03) and shall be accompanied by the certificate issued to the employee when he retired. The trustees may require such additional evidence that the retired employee is qualified to receive this pension benefit as they deem necessary, and their decision as to eligibility shall be final and binding.
- (d) If an employee has received a certificate of eligibility under subparagraph (b) and thereafter returns to covered employment, he shall not accumulate any pension credits or be entitled to receive any pension benefits other than the vested pensions. The period of discontinued service and contributions is not subject to the benefit of \$\frac{1}{2}.05\$.
- 2.04 Pension for Survivors When Death Occurs Before Retirement. (a) If an employee dies on or after July 1, 1971 and meets all of the requirements for a normal retirement pension except that he has not retired or made application, then his surviving spouse shall receive a pension for 120 months or until the spouse's death, whichever is earlier, beginning in the calendar month following the employee's death; provided that the spouse was married to the employee for at least 1 year immediately preceding the employee's death.
- (b) If the deceased employee is not survived by an eligible spouse, or if the surviving spouse dies before receiving 120

monthly payments, then the monthly payments described in subparagraph (a), or the balance thereof, as the case may be, shall be paid only to the dependent child or children. In no event shall the pension fund be obligated to pay out on behalf of the deceased employee to any and all eligible recipients more than an aggregate total of 120 monthly payments. If there is only one dependent child, he shall receive the entire monthly pension until no longer a dependent child at which time all pension benefits stop. If there are two or more dependent children, each shall receive an equal share of the monthly pension, and when each is no longer a dependent child, his share will be apportioned to or among the other dependent child or children.

(c) Notwithstanding any provision in the pension plan to the contrary, the surviving eligible spouse, or dependent child or children if there is no surviving spouse, shall elect whether to receive the survivor's pension or the death benefit payable under the Local 705 International Brotherhood of Teamsters Health & Welfare Fund, and there shall be no duplication of benefits. The election of the surviving eligible spouse shall be final and binding on the spouse, the dependent child or children, if any, and all other persons, and shall release and discharge the trustees and the pension fund from all liability whatsoever. If there is no surviving eligible spouse, but only a dependent child or children, the trustees in their sole discretion shall decide whether to pay this pension benefit, or not to pay it and thereby permit the dependent child or children to claim the death benefit from the Health & Welfare Fund, and the decision of the trustees is final and binding on the dependent child or children and all others.

2.05 Continuity of Employment. (a) Service as an employee with an Employer which is followed immediately by service as an employee with another Employer shall be considered as being an employee of one Employer.

(b) If after January 1, 1970 employment of, and contributions for, an employee are discontinued by the Employer because of layoff or any other reason beyond the employee's control (such as illness or military service but not including discharge for just cause or receipt of a certificate of eligibility for vested pension under 2.03) and if employment and contributions are resumed at a later date, the employee may apply to the trustees (in the form approved by the trustees) for re-

instatement of that period of continuous employment which occurred immediately prior to the discontinuance of employment and contributions. The trustees shall approve the application only if:

- (1) The period of discontinuance of service as an employee and the discontinuance of payment of contributions was less than 24 consecutive months (subject to the limitation in subparagraph (4) below); and
- (2) The subsequent period during which he is continually an employee of an Employer and for which contributions are continually received is at least 3 years, except that the 3 year requirement is waived if either death or disability occurs more than 6 months after his return as an employee and resumption of payment of contributions; and
- (3) Application is made not later than 90 days after the expiration of the 3 years in subparagraph (2) above, except if death shall occur within the 90 day period.
- (4) The trustees shall not grant more than 2 such applications to any employee, nor shall the total of breaks in service and contributions exceed 24 months. The period(s) of discontinued employment and contributions shall not be credited as year(s) of service or contributions for any purposes.
- (c) Whenever an employee represented by another local of the International Brotherhood of Teamsters or Chicago Truck Drivers Union (Independent), which has a collective bargaining agreement with an employer requiring the employer to make contributions to a pension fund on behalf of the employee, becomes an employee of an Employer covered by this plan solely because the Employer acquired the former employer, then the service as an employee with the former employer which is followed immediately by service as an employee of an imployer shall be considered employment and contributions under 2.01 (b), (c) and 2.02 (a) (1) and (2). The same service and contribution credits may be given where the employee obtains covered employment because his local union is absorbed into or merged with the Union. The Trustees may accept employees into the plan under this subparagraph on such terms and conditions as they deem proper

to preserve the integrity and actuarial soundness of the pension fund.

- (d) Large Scale Area Lay-offs. In the event of extensive lay-offs affecting large numbers of employees, the trustees shall have the power to waive contributions for regular participants for a maximum period of sixty (60) calendar days from the date of lay-off. It is intended that this waiver not be used on a regular basis but not more frequently than once every three to five years, depending on the severity of economic conditions.
- 2.06 Death Benefit Amount. (a) The pension fund will pay a \$1,000 funeral benefit upon the actual and not presumptive death of a normal or disability retirement pensioner, or an employee who was eligible to receive normal retirement pension benefits immediately prior to his death. Upon presentation to the administrator of proof of actual and not presumptive death, a certified copy of a death certificate, and an undertaker's bill, the pension fund shall pay \$1,000 or the cost of the burial, whichever is less, to either:
  - (1) The undertaker if his bill for internment is unpaid, or
  - (2) The person who paid the undertaker's bill upon presentation of a paid bill. Payment based upon presentation of a purported paid bill shall release and discharge the pension fund from all liability.
- (b) The balance remaining after the payment of the funeral expenses shall be paid to the following survivors of the deceased employee or pensioner in the following order:
  - (1) Spouse
  - (2) Children, including legally adopted children
  - (3) Parents
  - (4) Brothers and sisters.

The order of payment is not mandatory and the payment of the aggregate death benefits to any person named in subparagraph (a) or (b), or to the legal representative of the decedent's estate, shall be binding on all persons and shall automatically release and discharge the administrator, trustees, and pension fund from all liability or obligation.

(c) If an employee or pensioner dies and leaves no survivors listed in subparagraph (b) (1)-(4), the pension fund shall

not pay a death benefit but may take charge of the funeral and pay its reasonable expenses up to \$1,000, and the pension fund shall be entitled to benefits from the Social Security Administration.

(d) The death benefit shall not be paid if a death benefit is payable under the Local 705 International Brotherhood of Teamsters Health & Welfare Fund unless the person entitled thereto has waived the right to the benefit or otherwise.

(e) No beneficiary designation by will or otherwise is bind-

ing on the pension fund.

2.07 Eligibility Depends on the Employee or Pensioner. The eligibility of any person to receive the benefits provided in this plan is conditioned upon the eligibility of the employee or pensioner (as the case may be), and the right to receive these benefits does not separately accrue to anyone other than the employee or pensioner.

# 3 PENSION PAYMENTS

3.01 Pension Payments for Employees Who Retire Under Normal Retirement.

(a) Retirement prior to April 1, 1965:

An employee who retired and qualified for pension before April 1, 1965, shall be paid one hundred fifty dollars (\$150.00) per month during his lifetime, commencing with the monthly payment to be made December 1, 1965 (except that the one hundred fifty dollars (\$150.00) is increased to two hundred fifty dollars (\$250.00) with respect to payments due after November 30, 1969. If the death of the pensioner occurs before he has received one hundred twenty (120) monthly payments, and if he is survived by a spouse to whom he was married at the time of his retirement, then monthly payments shall be continued to be made to her until either an aggregate of one hundred twenty (120) monthly payments shall have been made since the pensioner's retirement, or until the spouse dies, whichever is the earlier.

(b) Retirement on and after April 1, 1965 but before January 1, 1969:

An employee who retired and qualified for pension on and after April 1, 1965, but before January 1, 1969, shall be paid during his lifetime the sum of two hundred fifty dollars (\$250.00) per month during the first sixty (60) months of his entitlement, and one hundred fifty dollars (\$150.00) per month thereafter (except that the one hundred fifty dollars (\$150.00) is increased to two hundred fifty dollars (\$250.00) with respect to payments due after November 30, 1969. If the employee dies before he has received one hundred twenty (120) monthly payments and if he is survived by a spouse to whom he was married at the time of his retirement. then monthly payments shall continue to be made to the spouse until either an aggregate of one hundred twenty (120) monthly payments shall have been made since the employee's retirement, or until the spouse dies whichever is the earlier.

(c) Retirement on and after January 1, 1969, but before January 1, 1971:

An employee who retired and qualified for pension on and after January 1, 1969, but before January 1, 1971, shall be entitled to a monthly pension of two hundred fifty dollars (\$250.00) per month for life. If the employee dies before he has received one hundred twenty (120) monthly payments and if he is survived by a spouse to whom he was married at the time of his retirement, then monthly payments shall continue to be made to the spouse until either an aggregate of one hundred twenty (120) monthly payments shall have been made since the employee's retirement, or until the spouse dies, whichever is the earlier.

(d) Retirement on or after January 1, 1971:

An employee who retires on or after January 1, 1971, and qualifies for a pension shall be entitled to a monthly pension for life determined in accordance with the following schedule:

Age on Date of Retirement	•	Monthly Pension
57		\$250
58		300
59		350
60 or more		400

If the death of the pensioner occurs before receiving one hundred twenty (120) monthly payments and he is survived by a spouse to whom he was married at the time of his retirement, then monthly payments shall continue to the surviving spouse until an aggregate of one hundred twenty (120) monthly payments shall have been made since the employee's retirement, or until the spouse's death, whichever is the earlier, except as provided in subparagraph (e) below.

- (e) If the employee retires on or after July 1, 1971, and dies before receiving one hundred twenty (120) monthly payments and is not survived by an eligible spouse, or such surviving spouse dies before one hundred twenty (120) monthly payments have been made, payments shall continue for the balance of the one hundred twenty (120) month period to the employee's dependent child or children, if any, except that no payments shall be made after all children have ceased to be dependent children. If there is only one dependent child, such child shall receive the entire monthly amount. If there are two or more dependent children, each shall receive an equal share of the monthly amount and, when each child ceases to be a dependent child, his or her share shall be apportioned among the other dependent children.
- 3.02 Pension Payments for Disabled Employees. (a) If an employee retired because of disability prior to January 1, 1971, and qualified for a disability pension under the Rules as in effect at the time of his retirement, he shall be entitled to a pension which is computed and payable in accordance with the provisions of ¶3.01.
- (b) An employee who retires on or after January 1, 1971, and qualifies for a disability pension under this plan, shall be entitled to a pension for life of two hundred fifty dollars (\$250.00) per month beginning as of the first day of the calendar month following a period of disability of twenty-six (26) full and continuous weeks, or thirty (30) days after his written application for pension payments, whichever is later. If the disability pensioner dies before receiving one hundred twenty (120) monthly payments and he is survived by a spouse to whom he was married for a period of at least one (1) year at the time of his retirement, then monthly payments shall continue to the surviving spouse until an aggregate of one hundred twenty (120) monthly payments

shall have been made since the pensioner's retirement, or until the spouse's death, whichever is the earlier, except as hereinafter indicated.

- (c) If the employee retires on or after July 1, 1971, and dies before receiving one hundred twenty (120) monthly payments and he is not survived by an eligible spouse, or such surviving spouse dies before one hundred twenty (120) monthly payments have been made, payments shall continue for the balance of the one hundred twenty (120) month period to the employee's dependent child or children, if any, except that no payments shall be made after all children have ceased to be dependent children. If there is only one dependent child, such child shall receive the entire monthly amount. If there are two or more dependent children, each shall receive an equal share of the monthly amount, and when each child ceases to be a dependent child, his or her share shall be apportioned among the other dependent children.
- 3.03 Pension Payments for Vested Employees. An employee who qualifies for a vested pension shall be entitled to a pension of two hundred fifty dollars (\$250.00) per month under \$\frac{1}{2}.03\$ with payments beginning on the first day of the month next following his 65th birthday and continuing for life, provided that an application has been made for such pension in accordance with the following provisions. An application which is received earlier than six months prior to the applicant's 65th birthday shall be of no effect. An application which is received after attainment of age 65 shall not entitle the applicant to any retroactive payments and, if an application is not received prior to age 70, the applicant shall forfeit his right to a pension.
- 3.04 Effective Date of Plan. Except as otherwise provided, this plan, as amended, shall become effective January 1, 1973. Pensioners, their spouse and children shall be governed by the rules in effect at the time of the pensioner's retirement except as otherwise specifically provided by an amendment adopted after retirement.
- 3.05 Non-Duplicating Pensions. Nothing contained in this plan shall be construed as permitting any person to be entitled simultaneously to more than one type of pension under this plan.

## REVISION AND STOPPAGE OF PAYMENTS

4.01 Revision of Payments. (a) All pension payments and eligibility requirements shall be subject to modification, extension, revision, curtailment, or other conditions which the trustees may impose or promulgate from time to time, provided that such conditions shall be uniform in application to all eligible employees or pensioners similarly circumstanced. The trustees may, from time to time, establish other and different plans and rules affecting employees who may be employed by a single Employer or group of Employers when circumstances in the sole discretion of the trustees warrant such action.

(b) If a pensioner who is receiving a pension returns to employment with an Employer and thereafter retires again, he shall receive only the pension benefit in effect on the date that he first retired.

4.02 Stoppage of Payments. (a) No pension shall be paid for any period when a pensioner is directly or indirectly engaged in the trucking or cartage industry individually or as an employee, associate, member, partner or an officer in any firm, association, partnership, or corporation. The trustees may in their sole discretion:

- Designate other employment which a pensioner may not engage in and continue to receive pension payments.
- (2) Upon application by a pensioner (in the form approved by the trustees), permit the pensioner to work for a trucker or hauler except he shall not be authorized to perform work or services similar to those performed by the pensioner for an Employer immediately preceding retirement, or which in any way conflicts with the business or interests of any of the pensioner's former Employers.
- (b) The benefits to a disability pensioner shall stop if before reaching normal retirement age the trustees decide that he is no longer disabled. For determination of normal retirement and vested pension requirements, the period of disability shall be considered as consecutive, continuous and uninterrupted years of employment with an Employer. If a

pensioner is no longer disabled and qualifies for a pension, he shall receive only the pension amount in effect on the date that he retired because of the disability.

- (c) If a pension benefit is returned to the pension fund, future payments will stop until the eligible recipient furnishes it with a correct address. If a correct address is not received within 12 months from the date the first payment was returned, the recipient shall automatically lose all rights to past pension payments.
- 4.03 No Assignment or Attachment of Benefits. Plan benefits shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for support of a spouse or former spouse or for any relative of the employee prior to actually being received by the person entitled to the benefit under the terms of this plan, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits hereunder shall be void. The pension fund shall not in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of any person entitled to benefits hereunder.
- 4.04 No Title or Interest. No person, other than the trustees shall have any right, title or interest in or to any of the income or property of any character received or held by or for the account of the pension fund, and no person shall have any vested right to the benefits provided by the pension fund except as provided in \$12.03 and \$13.03 of this plan.

# ADMINISTRATOR'S DUTIES AND APPEALS TO THE TRUSTEES, TRUSTEES POWERS

5.01 Sumbission to Administrator. (a) All questions or controversies of every nature in connection with the pension fund or this plan, or their operations, including but not limited to claims for benefits from an employee, pensioner, spouse, or other person, construction of the terms of the trust agreement, plan, rules and regulations, writing, decision, or acts, shall be first submitted to the administrator for decision and action. The action or decision of the adminis-

trator shall be final and binding unless appealed within the time and in the manner specified in \$5.02. The administrator may refer any matter directly to the trustees for decision.

- (b) The administrator and trustees are entitled to conclusively rely upon any facts appearing in the records of the pension fund or instruments on file with it or on file with the Union or Employer. (or certified by either of them), any facts which are public record, or any other evidence pertinent to the issue involved.
- (c) All submissions to the administrator shall be in writing to:

Louis F. Peick
Administrator
Local 705 I. B. of T. Pension Fund
300 South Ashland Boulevard
Chicago, Illinois 60607

5.02 Appeal to the Trustees.

- (a) Within 10 days after the decision of the administrator, an aggrieved person may appeal the administrator's decision or action to the trustees. The appeal shall be in writing directed to the administrator and received by him within the 10 day period. The administrator shall refer the appeal to the trustees for decision, and if the aggrieved person in his appeal requests an opportunity to appear before the trustees at a meeting to present his case, the trustees shall permit the person to appear himself or by a representative. The trustees may adopt rules and regulations governing the conduct of the hearings.
- (b) The decision of the trustees on all matters before them whether by way of appeal or otherwise shall be final and binding on the Union, Employer, employee, pensioner, spouse, dependent children, and all other persons who are claimants or are affected by the trustees' decisions or otherwise.
- 5.03 Sole Determination by Trustees. Only the administrator (subject to appeal) and the trustees have the authority to determine eligibility for benefits and the right to participate in the pension fund, and to exercise all the other powers specified in this plan. No officer, agent or employee of the Union, or Employer, or any other person, is authorized to

speak for, or on behalf of, or to commit the trustees or administrator, on any matter relating to the pension fund or plan.

#### 6 CONTRIBUTIONS

- 6.01 Amount of Contributions.
- (a) The Employer shall pay to the Fund on behalf of each regular employee per week the sum specified in the collective bargaining agreement between the Union and the Employer for any week in which the employee performs any services for the Employer including service not within the collective bargaining agreement.
- (b) An Employer shall pay to the Fund on behalf of each non-regular employee, including replacements for absentee employees, for each day worked an amount equal to 20% per day of the sum required for a regular employee,
  - 6.02 Duration of Employer Contributions.
- (a) Non-occupational illness or injury. If an employee does not perform services for an Employer because of a non-occupational injury or illness, the Employer shall continue to pay the required contributions for a period of 4 weeks, or until the employee is fit to return to work, whichever is the sooner. After the Employer has paid 4 weeks of contributions, the Employer and employee are not required to make further contributions for an additional period of 11 months, or until the employee is fit to return to work, whichever is earlier, and that period shall not be considered as a break in the employee's period of continuous, consecutive, uninterrupted years of service
- (b) Occupational illness or injury. If an employee does not perform services for an Employer because of an occupational injury or illness, the Employer shall continue to pay the required contributions for a period of 12 months, or until the employee is fit to return to work, whichever is the sooner.
- (c) Expiration of collective bargaining agreement. The Employer shall make the required contributions after the expiration of the collective bargaining agreement until a new agreement is consummated.

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- 6.03 Leave of absence. All leaves of absence, when granted by the Employer, in addition to the requirements of the parties, shall be conditioned upon the Employer and the employee making satisfactory arrangements for paying the weekly payment to the Fund, and at all times the payment shall be made by the Employer for the period of such granted leave of absence.
- 6.04 Employee Contributions. Whenever an Employer is not obligated to make payment to the pension fund for an employee (such as after the 12-months in 6.02 (b).) then the employee shall make the required payment, for a period not to exceed 3 months. The employee may appeal for an extension of time to the trustees.
- 6.05 Date of Contributions. Contributions must be received by the pension fund by the tenth day of the month immediately following the Employer's payroll period based on the number of Saturdays in the previous month.
- 6.06 Place of Payment. All payments required to be made to the pension fund shall be made payable to Local 705 I. B. of T. Pension Fund, 300 South Ashland Boulevard, Chicago, Illinois 60607, or at such other address as the pension fund may from time to time, in writing, direct, and shall be accompanied by an original copy of remittance in the form approved by the trustees.

## 7 SAVING CLAUSE

- 7.01 Construction. This plan shall not be deemed an amendment or modification of the trust agreement and shall be so construed, interpreted and applied so as not: (1) to be incompatible or in conflict with the trust agreement, or (2) invalid under any applicable law, or (3) to impair any preferred treatment or disqualify any exempt status which the pension fund may enjoy under the Internal Revenue Code as amended.
- 7.02 Invalidity of Any Provision. If any provision of this plan or the application thereof to any persons or circumstances shall be adjudged invalid, then the remainder of the plan and the application to persons and circumstances other than those to which it is held invalid shall not be affected thereby. The trustees may suspend the operation of any pro-

vision adjudged invalid or inoperative during the period of its invalidity and substitute in its place and stead a provision which will meet the objections to such invalidity and which will accord with the intent and purpose of the invalidated provision if that can be done legally.

#### 8 AMENDMENTS

8.01 The trustees by majority vote of those present and voting at a meeting where a quorum is present may amend this plan which amendment shall be reduced to writing and may be effective prospectively or retroactively. All amendments are subject to the limitations of the trust agreement and to applicable law and administrative regulations.

#### Availability of Plan Descriptions and Annual Reports Filed With The U.S. Labor Department

The Trustees of the Pension Plan are required to file with the U.S. Labor Department a comprehensive description of the Plan in a manner calculated to be understood by all Plan participants. Such a description has been filed and is available for your inspection at the Fund Office between the hours of 10:00 a.m. and 4:00 p.m. Monday through Friday, except holidays. Also available for inspection during the same hours is the latest annual report which is required to be filed each year with the U.S. Labor Department.

Both, a copy of the Plan description and a summary of the annual report, are available by mail upon a written request to the Fund Office.

Copies of Plan amendments are also available for inspection at the Fund Office or upon written request.

Local Union No. 705
International Brotherhood of Teamsters, Chauffeurs,
Warehousemen and Helpers of America
300 South Ashland Boulevard
Chicago, Illinois 60607

Secretary-Treasurer: Louis F. Peick

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Exhibit 1G Letter of July 23, 1974

(See Opposite)

EXHIBIT 1 G

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Address any reply to:

17 N Dearborn St., Chicago III 60602

THE PROPERTY SAND TO SANDERS THE PROPERTY

Phone Contact: P. Fetyko Phone Number: 353-1252

longial introctor

Internal Revenue Service

JL 2 3 197

File # 5581

Board of Trustees of Local 705 International Brotherhood of Teamsters Pension Fund 300 S. Ashland Blvd. Chicago, Ill. 60607

Gentlemen:

Name of Plan: Name of Trust: Application Form: Date Adopted: Local 705 International Brotherhood of Teamsters Pension Trust Fund Pension Plan

Deted: 3/13/14

Based on the information supplied, we have made a favorable determination on your application identified above.

Continued qualification of the plan will depend on its effect in operation as well as its present form. See section 1.401-1(b)(3) of the Income Tax Regulations. The enclosed Publication 794 describes some events that could occur after you receive this determination letter that would automatically nullify it without specific notice from us. The publication also provides information about filing requirements, the effect of determination letters and plan operations, and the deductibility of contributions. The status of the plan in operation will be reviewed periodically.

If your application covered an amendment only, this letter is an opinion only as to whether the amendment submitted affects the existing status of the qualification of the plan and exemption of the trust. It is not a determination on the continued qualification of the entire plan.

This letter relates only to the status of your plan under the Internal Revenue Code. It is not a determination regarding the effect of other Federal or local statutes.

Please keep this letter in your permanent records.

Form L-325 (Rev. 6-73)

## EXHIBIT 1 G

You should furnish annually a new list of participating employers similar to the schedule submitted, indicating, however, those employers who have adopted the plan during the year and those employers who have ceased to be members of the plan. You should also furnish annually information similar to that described in Revenue Ruling 70-257, IRB No. 1970-21.

This opinion, however, is not to be taken as an indication that the Internal Revenue Service is in any way passing upon the actuarial soundness of the plan or on the reasonableness of the actuarial computations.

Very truly yours,

Charles F. Miriani District Director

# [ ::vorable Letter

# Potermination

EXHIBIT 1 G

Publication 794 (6-73)

Effect Under Sections 401. 406(a), or 601(a) of the Internal Revenue Code

This publication describes some events that could sullify the favorable determination letter.

## Operation of the plan in subsequent years

Rev. Proc. 72-6, 1972-1 C.B. 710, 712, and Rev. Rul. 69-24, 1969-1 C.B. 110, 111, provide, in part, that;

... While a favorable determination letter may serve as a basis for determining deductions for employer contributions thereunder, it is not to be taken as an indication that contributions are necessarily deductible as made Such determinations can be made only upon an examination of the employer's tax return, in accordance with the limitations and subject to the conditions of section 404 of the Code . . .

". . . A determination letter issued with respect to the qualification of a plan under section 401(a) of the Code, is based on the information furnished by the employer. . . . The wording contained within the four corners of a written document may spell out a theoretically qualified plan which may or may not materialize in actual operation. For example, a plan may be open to all employees who have one year of service and who will be entitled to pensions commencing at normal retirement age 65 only if they remain with the employer until that age and have at least 10 years of service at retirement

Such provisions have been found acceptable in certain cases, and favorable determination letters have been issued. . . . A high rate of service separations, however. may leave relatively few of the lower paid employees but practically all of the officers, shareholders, super visors, and highly compensated employees in the plan. resulting in discrimination in favor of the latter group Thus, in operation, such a plan does not meet the require ments of section 401(a) of the Code for some part or all of the period of its operation . . .

In view of the above, if governge is based on the percentage requirement of section 401(a)(3)(A) of the Code and this requirement is not met in some years following issuance of the favorable determination letter. the laxpayer may no longer rely on the letter.

Similarly, if coverage is based on the requirement of section 401(a)(2)(B) of the Code and the coverage of employees in the lower and middle compensation ranges is reduced materially in any subsequent year from that in your application, our favorable determination letter will not apply.

A plan will be considered as meeting these coverage requirements during the whole taxable year if on any one day of each quarter it satisfies these requirements.

If employee turnover results in the allocation of forfeitures principally to the benefit of officers, shareholders.

supervisors, and highly compensated employees, our favorable determination letter will not apply

These few examples are not the only developments in operation that could cause a plan to lose its qualified Marus.

#### General

If the determination was made from a copy of the plan or amendment and the copy was not signed or dated, you must furnish us a signed and dated copy for the determination letter to be effe tive.

To determine whether your plan falls within the general wage and salary standards, see the regulations lasued by the Cost of Living Council under the authority of the Economic Stabilization Act of 1970, as amended. If you have any questions, our Economic Stabilization Section will be pleased to help you.

#### Requirements for filing returns

Employers must file Form 4848, Annual Employer's Return for Employees' Pension or Profit-Sharing Plana and required attachments.

The fiduciary must file Form 990-P. Annual Return of Fidu:iary of Employees' Pension or Profit-Sharing Trust, and required attachments. In addition, the following forms may also be required:

Form 990-T. Exempt Organization Business Income Tax Return, if unrelated business income was realized.

Form W-2P. Statement for Recipients of Annuities. Pensions, or Retired Pay.

Form 1099R. Statement for Recipients of Lump-Sum Distributions from Profit-Sharing and Retirement Plans

Form W-3, Transmittal of Income and Tax State-

For W-3P, Annual Report by Certain Payors of Annuities and Lump Sum Distributions.

The part of the insurance premiums paid for life insurance protection is considered income to the employee in the year in which the premium is paid and must be reported on Form 1099R, if paid by the Aductary or on Form W-2, if paid by the employer.

Every fiduciary and trust is required to have an employer identification number, regardless of whether it has any employees. This number should be entered in the space provided on all Federal returns filed and referred to on all correspondence with the Internal Revenue Service. If the Aductory, or trust does not have such a number and has not applied for one, Form \$5-4, Application for Employer Identification Number, should be filed with the appropriate Internal Revenue Service Center.

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# Exhibit 1H Letter of June 11, 1971

(See Opposite) E

**LOCAL 705** 

L B. of T.

EXHIBIT 1 H



# HEALTH & WELFARE AND PENSION FUNDS

300 MINUTH ASHLAND BOULEVARD . Telephone 738-2800 . CHICAGO, ILL.

June 11, 1971

LOUIS F. PEICK, See'y-Treas.

To the Members of Local 705, I. B. of T.

Dear Sir and Brother

I am pleased to report that the Boards of Trustees of the Local 705, I B of T Pension Fund and the Local 705 L.B. of T. Health and Welfare Fund have voted to make substantial improvements in benefits

This report is a summary of the changes approved by the Union-Employer Boards of Trustees The full, official details of the improvements will be included in a new booklet now being prepared. We present this preliminary information to let the members know what has been accomplished.

The action of the Trustees continues the record of progress made in the benefit structure for eligible employee-members and dependents. The Trustees worked long and hard to find the best possible use of the funds, always making sure that the plans are financially sound We had the constant advice of one of the nation's most expert actuaries-specialists in figuring how money for pensions and health and welfare benefits can buy the best possible coverage.

We believe that the Local 705, I. B. of T. Pension and Health and Welfare Plans stand up well against any other plan covering workers in our general wage bracket. Our goal, as always, is security for the members and their dependents, and safety of the funds for the future. We know you share our pride in what the Trustees have done.

Here is an explanation of the changes

#### MONTHLY NORMAL RETIREMENT PENSIONS **EFFECTIVE JANUARY 1, 1971**

The monthly cormal retirement pensions to be paid to those retiring on or after January 1 1971, under the eligibility standards set by the bourn of Trustees are as follows

YEARS OF COVERED SERVICE	AGE AT RETIREMENT	MONTHLY PENSION
20	57	\$250.00
20	. 58	300.00
20	59	350.00
20	60 or over	400.00

**EXAMPLE:** A covered member who retired February 1, 1971 at age 61 with at least 20 years of service will receive a check covering the increase from \$250.00 to \$400.00 per month, or \$150.00 for each month since February 1, 1971

PLEASE DO NOT CALL OR WRITE THE PENSION FUND HEADQUARTERS ABOUT YOUR RETROACTIVE CHECKS. THEY WILL BE PAID TO THOSE ELIGIBLE AS SOON AS POSSIBLE.



#### EXHIBIT 1 H

#### PERMANENT PHYSICAL DISABILITY RETIREMENT EFFECTIVE JULY 1, 1971

Covered members with at least 15 years of continuous service who are permanently disabled on or after July 1, 1971, and therefore unable to work will be entitled to a pension of \$250.00 per month, regardless of age. Previously, the disabled member had to be at least 45 years of age to be eligible for a disability pension.

# WIDOWS' and DEPENDENT CHILDREN'S BENEFITS EFFECTIVE JULY 1, 1971

A covered member who dies while still employed, after at least 20 years of service (or 240 months) and having reached a retirement age (minimum, 57 years) will be treated as if he had retired on the day before his death. The widow, if she had been married to the member for at least one year before his death, can take these options:

- 1. Receive the \$5,000 death benefit provided under the Health and Welfare Plan plus the \$1,000 death benefit provided by Local 705, a total of \$6,000, and waive all rights to pension benefits . . . or
- 2. Receive 120 months (10 years) of certain benefits at the rate which would have prevailed if the member had retired the day before his death, plus the \$1,000 death benefit from the Pension Fund and the \$1,000 death benefit from Local Union No. 705.

**EXAMPLE:** Member on payroll of firm under contract with Local 705, I. B. of T. with at least 20 years of service, dies at age 59, leaving a widow with no minor children will receive monthly payments of \$350.00 for 120 months (10 years), or a total of \$42,000.00. If she dies before the 120 payments are made, the benefits stop.

If the covered member dies while employed and leaves no widow, the benefits will be allocated equally to the dependent children of the deceased member.

(A dependent child is entitled to benefits if under age 18, unmarried, or under age 23, unmarried, if attending an accredited institution of learning.)

**EXAMPLE:** Member (widower) on payroll of firm under contract with Local 705, I. B. of T. with at least 20 years of service, dies at age 58, and there are three children: one, age 19, is in college; the other children are ages 14 and 12. If the member had retired the day before his death, he would have been entitled to a pension of \$300.00 per month.

Each child would receive a benefit of \$100.00 per month, until reaching age 18 or age 23 if still a full-time student in an accredited institution of learning, or until the 120 payments (10 years) have been used up, or until the dependent children are married.

If the wife who decides to take the pension benefit dies before receiving 120 months of benefits, the balance of the benefits will be equally divided among the dependent children and paid so long as each is dependent, or to the balance of the unused months of benefits.

**EXAMPLE:** Member on payroll of firm under contract with Local 705, I. B. of T. with at least 20 years of service, dies at age 60, leaving a wife and two children. The widow dies after drawing benefits for 2 years. The children at time of her death are 10 and 8.

Here is how it would work:

Wife drew benefits for 2 years (24 months) at \$400.00 per mo	nth\$ 9,600.00
Child A (10 yr. old) 8 yrs. at \$200.00 per month	19,200.00
Child B (8 yr. old) 8 yrs. at \$200.00 per month	19,200.00

48,000.00

#### EXHIBIT 1 H

#### VESTING

#### EFFECTIVE JULY 1, 1971

A covered member with at least 20 years of service but younger than retirement age who leaves the craft on or after July 1, 1971, will be vested with a pension benefit of \$250 per month payable for life starting at age 65. This is the only pension benefit provided.

Widows and dependent children of persons leaving the craft under these circumstances are not entitled to benefits for surviving widows or dependent children as described above.

#### RIGHTS OF MEMBERS WHO HAVE BREAKS IN SERVICE EFFECTIVE JANUARY 1, 1970

An employee who has had no more than two (2) breaks in service may apply to the Board of Trustees to have his previous service reinstated upon the following conditions:

- 1. The breaks in service were involuntary; and
- 2. The total length of the two breaks in service did not exceed 2 years, and
- Upon return to employment, the employee has worked for a contributing employer for at least 3 consecutive years; provided, however, that for purposes of a disability pension and widow or dependent children benefit the length of time shall be six consecutive months.

The break in service shall not be counted as years of service for pension credit purposes. No employee shall be eligible for any benefits during the break in service.

#### IMPROVEMENTS IN HEALTH AND WELFARE BENEFITS EFFECTIVE JULY 1, 1971

- Hospitalization benefits are increased to \$60.00 per day to a maximum of 60 days.
- 2. Normal maternity maximum benefits are increased from \$350.00 to \$500.00.
- 3. Caesarian delivery maximum benefit is increased from \$500.00 to \$650.00.
- 4. Unmarried children up to the age of 23. attending an accredited institution of learning on a full-time basis will be covered under the Health and Welfare Plan as "dependent children." All other children will become ineligible for Health and Welfare Plan benefits at age 18, or at marriage, whichever occurs first.

The Trustees are examining the entire Health and Welfare Plan to develop additional improvements in tenefits where possible. They will be included in the new booklet now being prepared.

We are deeply grateful to the Boards of Trustees for their efforts in making these improvements in the Pension and Health and Welfare Plans. The loyalty, cooperation and the patience of the membership makes possible these gains for the members and their families.

Sincerely and fraternally yours,

Louis F. Peick, Secretary-Treasurer Local Union No. 705, I. B. of T.

For your information, as explained at the meeting, the formal amendments will be included in the new booklet.

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THE R. P. LEWIS CO., LANSING

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Exhibit 11 Letters of March 18. 1974 and April 11, 1974

(See Opposite)

#### EX.IBIT 1 I

provided to A. S. Street, Str., and receptor on the formal or March 18, 1974

U.S. Department of the Treasury Internal Revenue Service 17 M. Dearborn Street Chicago, Illinois

Attention: Pension Trust Section

Re: Local 705 International Brotherhood of Teamsters Pension Fund

National Agreement, which experience one collection companions such

#### Gentlemen:

As counsel for the Local 705 International Brotherhood of Teamsters Pension Fund, pursuant to a power of attorney previously filed with you. I am requesting a determination that the Plan continues to meet the requirements of Section 401(a) of the Internal Revenue Code: that the trust is still entitled to exemption under Section 401(a): and that the employer contributions are deductible subject to Section 404. To that end I am enclosing:

- 1. Original Application for Detarmination (Form 4577) with attachments consisting of the actuarial methods, factors, and assumptions used, a P.S. 64 Certification, and a current list of contributing employers.
- 2. A summary of amendments enacted on August 29 and December 3, 1973 which are the subject of this application.
- 3. A copy of Joint Council No. 25 Reciprocal Agreement for teamster pension funds which was adopted and executed by the Board of Trustees on August 29, 1973.
  - 4. A copy of the actuarial valuation as of July 31, 1973

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U.S. Department of the Treasury March 18, 1974 Page Two:

prepand by A.S. Hansen Inc., and adopted by the Board of Trustees.

5. A copy of the July 1, 1973-March 31, 1976 Joint Ages Cartage Agreement and the Bovember 1, 1973-October 31, 1976 Oil Drivers Agreement, which constitute the collective bargaining agreements covering substantially all of the participants.

If there is anything further you wish please contact me.

Very truly yours,

CARMELL & CHARGEE, LTD.

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Sherman Carmell

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Q.C: Mr. Paick

Mr. Prank Baker Mr. Don Brothers

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#### EXHIBIT 1 I

April 11, 1974

U.S. Department of the Treasury Internal Revenue Service 17 N. Dearborn Street Chicago, Illinois

Attention: Mr. Peikel, Pension Trust Section

Dear Mr. Peiket:

Pursuant to our telephone conversation I am enclosing a copy of the formal amendments to the pension plan which reflect the actions of the board of trustees on August 29 and December 6, 1973 pursuant to our initial submission. Article 3 (pension payments) of the plan, as amended to January 1, 1973, has been amended to reflect the new increased pension benefits, and a new Article 9 has been inserted to provide for the Teamsters Joint Council No. 25 Reciprocal Agreement. These formal amendments will be adopted at the next trustees meeting which is scheduled for May 1974. I am also enclosing the plan booklet effective January 1, 1969 which was the immediate codified predecessor of the January 1, 1973 pension plan.

Very truly yours,

CARMELL & CHARONE, L'TD.

SC:imd Encl: Sherman Carmell

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#### IN THE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Title Omitted]

Defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter "IBT") separately answers the allegations of the complaint in the above entitled proceeding, as they relate to this defendant, as follows:

#### COUNT I

- 1. This defendant denies the allegations contained in paragraph 1 of Count I.
- 2. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of Count I, and on that ground denies such allegations.
- 3. This defendant denies the allegations contained in paragraph 3 of Count I.
- 4. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of Count I, and on that ground denies such allegations.

# Answer to Complaint filed by Defendant International Brotherhood of Teamsters ("I.B.T.")

- 5. This defendant denies that plaintiff is a proper representative of all members of IBT, Local 705 and all other affiliated locals. This defendant further denies that plaintiff or any member of the alleged class which plaintiff purports to represent purchased or acquired an interest in a Teamster pension plan.
- 6. This defendant denies that plaintiff is a proper representative of all members of IBT, Local 705 and all other affiliated locals. This defendant further denies each of the remaining allegations contained in paragraph 6 of Count I.
- 7. In answer to paragraph 7 of Count I, this defendant admits that it is a national labor organization. This defendant denies that it is properly named and sued herein as a representative of all local Teamster union organizations throughout the United States, but admits that it has a contractual relationship with local Teamster union organizations throughout the United States in that the Constitution of the IBT constitutes a contract between the IBT and local organizations and refers to the provisions thereof for the terms of said contractual relationship. The remaining allegations contained in paragraph 7 of Count I are denied.
- 8. This defendant admits that Local 705 is a labor organization which has a contractual relationship with IBT as alleged hereinabove in answer to paragraph 7, but denies that Local 705 is properly named and sued as a representative of all local Teamster union organizations throughout the United States. All of the remaining allegations contained in paragraph 8 of Count I are denied.
- 9. In answering paragraph 9 of Count I, this defendant admits that Louis Peick is a Trustee of the pension trust

fund of Local 705 and that Louis Peick is an officer of Local 705. This defendant denies that Louis Peick is a proper representative of all Trustees of all Teamster pension funds. This defendant further denies that Louis Peick is a proper representative of all officers of IBT and of all local Teamster union organizations throughout the United States.

- 10. This defendant denies each of the allegations contained in paragraph 10 of Count I.
- 11. This defendant denies that it negotiates labor contracts with companies across the United States for the benefit of its members who are employed by such companies. It admits that local Teamster union organizations do negotiate labor contracts with companies across the United States for the benefit of their members and others who are employees of such companies. All the remaining allegations contained in paragraph 11 of Count I are denied.
- 12. In answer to paragraph 12 of Count I, this defendant admits that various collective bargaining agreements provide, in part, for contributions to be paid into various pension trust funds by employers when work is performed thereunder, and admits that the monies contributed by employers to such pension trust funds are customarily held in trust and invested by trustees of such fund; but this defendant denies that any such contributions are paid into any IBT pension fund. All the remaining allegations contained in paragraph 12 of Count I are denied.
- 13. This defendant denies each of the allegations contained in paragraph 13 of Count I.

admits that Louis Poick is a Transac of the popular

# Answer to Complaint filed by Defendant International Brotherhood of Teamsters ("I.B.T.")

- 14. This defendant denies each of the allegations contained in paragraph 14 of Count I.
- 15. On information and belief this defendant admits that moneys contributed to the pension trust funds referred to in paragraph 15 of the complaint are invested by trustees, but is without knowledge or information sufficient to form a belief with respect to any reasonable expectancy as to the growth of such investments. Defendant is without knowledge or information sufficient to form a belief as to the provisions of all pension plans adopted pursuant to the aforesaid pension trusts, except that, on information and belief, defendant alleges that there is a wide variation among said plans with respect to pension eligibility requirements. Defendant therefore denies the remaining allegations contained within paragraph 15.
- 16. This defendant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 16 of Count I, and on that ground denies such allegations.
- 17. This defendant denies each of the allegations contained in paragraph 17, and subparagraphs  $\Lambda(1)$ . (2), and B(1), (2), (3), (4), (5), (6) and (7) thereof, of Count I.
- 18. This defendant denies each of the allegations contained in paragraph 18 of Count I.
- 19. This defendant denies each of the allegations contained in paragraph 19, and subparagraphs (a), (b), (c) and (d) thereof, of Count I.
- 20. This defendant denies each of the allegations contained in paragraph 20 of Count I.

#### COUNT II

- 1-18. In answer to paragraphs 1-18 inclusive of Count II, this defendant incorporates by reference its answers to paragraphs 1-18 of Count I, as set forth above.
- 19. This defendant denies each of the allegations contained in paragraph 19, and subparagraphs (a), (b), (c) and (d) thereof, of Count II.
- 20. This defendant denies each of the allegations contained in paragraph 20 of Count II.

#### COUNT III

- 1-18. In answer to paragraphs 1 through 18 inclusive of Count III, this defendant incorporates by reference its answers to paragraphs 1-18 of Count I, as set forth above.
- 19. This defendant admits each of the allegations contained in paragraph 19 of Count III.
- 20. This defendant denies each of the allegations contained in paragraph 20 of Count III.
- 21. This defendant denies each of the allegations contained in paragraph 21, and subparagraphs (a), (b) and (c) thereof, of Count III.
- 22. This defendant denies each of the allegations contained in paragraph 22 of Count III.
- 23. This defendant denies each of the allegations contained in paragraph 23 of Count III.

# Answer to Complaint filed by Defendant International Brotherhood of Teamsters ("I.B.T.")

#### COUNT IV

- 1-18. In answer to paragraphs 1-18 inclusive of Count IV, this defendant incorporates by reference its answers to paragraphs 1-18 of Count I, as set forth above.
- 19. This defendant denies each of the allegations contained in paragraph 19 of Count IV.

#### COUNT V

- 1-18. In answer to paragraphs 1-18 inclusive of Count V, this defendant incorporates by reference its answers to paragraphs 1-18 of Count I, as set forth above.
- 19. In answer to paragraph 19 of Count V, this defendant denies that it is the exclusive representative of plaintiff and members of the alleged class for the purposes of collective bargaining and accordingly denies the allegation of its duty as contained in said paragraph. This defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 19 of Count V, and on that ground denies the remaining allegations.
- 20. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of Count V.
- 21. This defendant denies each of the allegations contained in paragraph 21 and subparagraphs (a), (b) and (c) thereof, of Count V.
- 22. This defendant denies each of the allegations contained in paragraph 22 of Count V.
- 23. This defendant denies each of the allegations contained in paragraph 23 of Count V.

#### SEPARATE AND AFFIRMATIVE DEFENSES

- 1. This court does not have subject matter jurisdiction with respect to the allegations contained in Counts I and II under Section 22(a) of the Securities Act of 1933, 15 U.S.C. §77v(a) or Section 27 of the Securities Exchange Act of 1934, 15 U.S.C. § 78aa.
- 2. Counts I and II of the complaint fail to state a claim upon which relief can be granted under Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q or Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b).
- 3. This court does not have subject matter jurisdiction with respect to the allegations contained in Count III under 28 U.S.C. § 1337, § 301(a) of the National Labor Relations Act, 29 U.S.C. § 185(a), or § 9(a) of the National Labor Relations Act, 29 U.S.C. § 159(a).
- 4. Count III of the complaint fails to state a claim upon which relief can be granted under § 302(c)5 of the National Labor Relations Act, 29 U.S.C. § 186(c)5.
- 5. The court lacks jurisdiction of the subject matter of the pendent claims under Counts IV and V of the complaint.
- 6. The court lacks jurisdiction of the subject matter of the complaint in that plaintiff has failed to exhaust his administrative remedies before the Department of Labor, under 29 U.S.C. § 308.
- 7. Plaintiff is not a proper class representative of the alleged plaintiff class under Rule 23, F.R.C.P.
- 8. Defendant I.B.T. is not a proper class representative of the alleged defendant class of all local teamster affiliate unions under Rule 23, F.R.C.P.
- 9. Defendant Local 705 is not a proper class representative of the alleged defendant class of all local affiliates of the Teamsters International similarly situated under Rule 23, F.R.C.P.

# Answer to Complaint filed by Defendant International Brotherhood of Teamsters ("I.B.T.")

- 10. Plaintiff has failed to join necessary and indispensable parties, pursuant to Rule 19, F.R.C.P., including the Local 705 International Brotherhood of Teamsters Pension Fund, and the individual members of the Board of Trustees of the Local 705 Pension Fund.
- 11. The complaint alleges violations of law with respect to which relief is barred by applicable statutes of limitations.

WHEREFORE, defendant I.B.T. prays that plaintiff takes nothing by its complaint, that the complaint be dismissed in its entirety, that defendant recover its costs of suit and for such other and further relief as the Court deems proper.

DATED: November 29, 1974.

DICKSTEIN, SHAPIRO & MORIN

By /s/ Sidney Dickstein
Sidney Dickstein
1735 New York Avenue, N. W.
Washington, D. C. 20006

GOTTLIEB AND SCHWARTZ

- By /s/ Bernard Weisberg Bernard Weisberg
  - Jack B. Schmetterer
    120 South La Salle Street
    Chicago, Illinois 60603

Counsel for Defendant,
International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers
of America

# Motion of Defendant I.B.T. to Dismiss Counts I and II

IN THE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Title Omitted]

MOTION OF DEFENDANT
INTERNATIONAL BROTHERHOOD OF
TRANSTERS TO DISMISS COUNTS I AND II

The defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, by its attorneys, moves the Court pursuant to Rule 12(b) F.R.C.P. to dismiss Counts I and II of the Complaint herein on grounds that this Court does not have subject matter jurisdiction and those Counts of the Complaint do not state claims upon which relief can be granted under either the Securities Act of 1933 or the Securities Exchange Act of 1934, as alleged in those Counts.

- /s/ Bernard Weisberg Bernard Weisberg
- Jack B. Schmetterer
  Jack B. Schmetterer
  Gottlieb and Schwartz
  120 South La Salle Street
  Chicago, Illinois 60603
  Telephone: 726-2122
- /s/ Sidney Dickstein
  Sidney Dickstein
  Dickstein, Shapiro & Morin
  1735 New York Avenue, N.W.
  Washington, D. C. 20006

Counsel for Defendant International Brotherhood of Teamsters

# Corrected Amendment to Complaint (Count VI)

IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

[Title Omitted]

CORRECTED AMENDMENT TO COMPLAINT

Plaintiff hereby makes a corrected amendment to his Complaint in the above entitled action by adding thereunto the following Count VI:

#### COUNT VI

- 1.-18. Plaintiff herein realleges the allegations of Paragraphs 1 through 18 of Count I.
- 19. The jurisdiction of this Court to hear Count VI of this Complaint is based on the original jurisdiction of the Court to hear "any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies," 28 U.S.C. Section 1337, and on Section 302(e) of the National Labor Relations Act, 29 U.S.C. Section 186(e) (hereinafter referred to as "NLRA"), and as hereinafter set forth, this action involves violations of Section 302(c) (5) of the NLRA, 29 U.S.C. Section 186(c)(5).
- 20. The pension plans and pension trust funds established by the Teamsters International, Local 705, and all other local affiliates of Teamsters International and established, managed and administered by Defendant Peick and

## Corrected Amendment to Complaint (Count VI)

all other Trustees of all Teamster pension funds have been established pursuant to statutory authority and the statutory requirement that such pension trust funds and all contributions thereto shall be for the sole and exclusive benefit of the employees. Section 302(c)(5) of the NLRA, 29 U.S.C. Section 186(c)(5).

- 21. Defendant labor union organizations Teamsters International, Local 705, and all other local affiliates of Teamsters International and Defendant Peick and all other Trustees of all Teamster pension funds have violated Section 302(c)(5) of the NLRA through the establishment, management and use of:
  - a) Arbitrary and unreasonable actuarial bases for the determination of benefits to a Teamster union member from a local Teamster affiliate or Teamsters International pension fund;
  - b) Arbitrary and unreasonable length requirements as part of the vesting provisions of local Teamster affiliate or Teamsters International pension plans;
     and
  - c) Arbitrary and unreasonable continuity requirements as part of the vesting provisions of local Teamster affiliate or Teamsters International pension plans.
- 23. As applied to Plaintiff and the other members of the class he represents, the effect of the establishment, management and use of such arbitrary and unreasonable actuarial bases and length and continuity requirements is to preclude the payment of any pension benefits from such local Teamster affiliate or Teamsters International pension plans to any or most of the members of the Plaintiff class and to benefit Defendants and others. As a result, the establishment, management, and use of such actuarial

# Corrected Amendment to Complaint (Count VI)

bases and length and continuity requirements constitute violations of Section 302(c)(5) of the NLRA.

- 24. Defendant labor union organizations Teamsters International, Local 705, and all other local affiliates of Teamsters International and Defendant Peick and all other Trustees of all Teamster pension funds have violated Section 302(c)(5) of the NLRA through their diversion of, or their acquiescence in the diversion by others of, funds held in trust for local Teamster affiliate or Teamster International pension funds from their lawful purposes and to the benefit of Defendants or to the benefit of others, or to enhance Defendants' position, status, or prestige, or to enhance the position, status, or prestige of others.
- 25. As a direct and proximate result of Defendant's labor union organizations Teamsters International, Local 705, and all other local affiliates of Teamsters International and Defendants Peick and all other Trustees of all Teamster pension funds, violation of Section 302(c) (5) of the NLRA. Plaintiff and all other members of the class he represents have sustained substantial loss and injury.

WHEREFORE, Plaintiff prays that this Court:

- a) Make a determination that the named Plaintiff represents all other Teamster union members in the United States as a class as heretofore alleged;
- b) Find that Defendants International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization, and Local 705 International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization, by themselves and as representatives of the class of all local Teamster affiliate unions similarly situated; and

# Corrected Amendment to Complaint (Count VI)

Louis Peick, by himself and as representative of all Trustees of all Teamster pension funds have violated Section 302(c)(5) of the NLRA, 29 U.S.C. Section 186(c)(5).

- e) Order that all pension fund agreements of the Teamsters International and all local Teamster affiliate unions be reformed by deleting therefrom all arbitrary length and continuity requirements of all vesting provisions in such pension fund agreements.
- d) Enter judgment against the Defendants International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization and Local 705 International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization, by themselves and as representatives of the class of all local Teamster affiliate unions similarly situated, and Louis Peick, by himself and as representative of all Trustees of all Teamster pension funds, in an amount equal to all pension benefits unlawfully denied Plaintiff and all other members of the class he represents, with interest thereon;
- e) Enter judgment against the Defendants International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, a labor union organization, by themselves and as representatives of the class of all local Teamster affiliate unions similarly situated, and Louis Peick, by himself and as representative of all Trustees of all Teamsters pension funds in an amount equal to all those funds held in trust for local Teamster affiliate or Teamsters International pension funds

# Corrected Amendment to Complaint (Count VI)

which have been unlawfully diverted from their proper purposes; and

f) Grant such other and further relief as this Court deems to be fair and equitable under the circumstances.

Respectfully submitted,

/s/ PETER J. BARACK PETER J. BARACK

/8/ LAWRENCE WALNER
LAWRENCE WALNER

LAWRENCE WALNER & ASSOCIATES, LTD. 221 North LaSalle Street Chicago, Illinois 60601 (312) 332-6576

PETER J. BARACE, Esq. 357 East Chicago Avenue Chicago, Illinois 60611 (312) 649-8372

#### IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

[Title Omitted]

Defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter "IBT") separately answers the allegations of corrected Count VI of the Complaint filed herein with leave of court, as those allegations relate to this defendant.

#### COUNT VI

- 1-18. In answer to Paragraphs 1 to 18 inclusive of Count VI, this defendant incorporates by reference its answers heretofore filed to Paragraphs 1 to 18 inclusive of Count I.
- 19. This defendant denies each of the allegations contained in Paragraph 19.
- 20. This defendant admits that the pension plans and trust funds established by Local 705 and other affiliates of IBT were established and managed pursuant to law, but denies that Paragraph 20 of Count VI accurately summarizes the requirements of law pertinent thereto and denies all other allegations thereof.
- 21. This defendant denies all allegations contained in Paragraph 21 of Count VI, and in subparagraphs (a), (b) and (c) thereof.

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Answer of Defendant I.B.T. to Corrected Count VI

- 22. (No Paragraph 22 is contained in Count VI)
- 23. This defendant denies all allegations contained in Paragraph 23 of Count VI.
- 24. This defendant denies all allegations contained in Paragraph 24 of Count VI.
- 25. This defendant denies all allegations contained in Paragraph 25 of Count VI.

#### SEPARATE AND AFFIRMATIVE DEPENSES

- 1. This Court does not have subject matter jurisdiction with respect to the allegations contained in Count VI under 28 U.S.C. §1337, or under §302(c) or §302(c)(5) of the National Labor Relations Act, 29 U.S.C. §186(c), §186(c)(5).
- 2. Count VI of the Complaint fails to state a claim upon which relief can be granted under §302(c)(5) of the National Labor Relations Act, 29 U.S.C. §186(c)(5).
- 3. The Court lacks jurisdiction of the subject matter of the Complaint in that plaintiff has failed to exhaust his administrative remedies before the Department of Labor, under 29 U.S.C. §308.
- 4. Plaintiff is not a proper class representative of the alleged plaintiff class under Rule 23, F.R.C.P.
- 5. Since a class of all local teamster affiliate unions as alleged in the Complaint is improper under Rule 23, F.R.C.P., defendant IBT is not a proper class representative thereof.
- 6. Defendant Local 705 is not a proper class representative of the alleged defendant class of all local affiliates of

the Teamsters International similarly situated under Rule 23, F.R.C.P.

- 7. Defendant Louis Peick is not a proper class representative of the alleged trustee class under Rule 23, F.R.C.P.
- 8. Plaintiff has failed to join necessary and indispensable parties, pursuant to Rule 19, F.R.C.P., including the Local 705 International Brotherhood of Teamsters Pension Fund, and the individual members of the Board of Trustees of the Local 705 Pension Fund.
- 9. Count VI of the Complaint alleges violation of law with respect to which relief is barred by applicable statutes of limitations.
- 10. Plaintiff has failed to exhaust his intra-union remedies.

WHEREFORE, defendant IBT prays that plaintiff takes nothing by its complaint, that the complaint be dismissed in its entirety, that defendant recover its costs of suit and for such other and further relief as the Court deems proper.

/s/ Bernard Weisberg Bernard Weisberg

/s/ JACK B. SCHMETTERER Jack B. Schmetterer

Of Counsel:

Gottlieb and Schwartz 120 South La Salle Street Chicago, Illinois 60603 Phone: 726-2122

> /s/ Sidney Dickstein Sidney Dickstein

# 97 a

Answer of Defendant I.B.T. to Corrected Count VI

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Of Counsel:

Dickstein, Shapiro & Morin 1735 New York Avenue, N.W. Washington, D. C. 20006

> Counsel for Defendant, International Brotherhood of Teamsters, Chauffeurs, Warehouseman and Helpers of America

#### Motion for Plaintiff Class Action Certification

IN THE

United States District Court

For the Northern District of Illinois

Eastern Division

[Title Omitted]

Now Comes the Plaintiff, John Daniel, in the above captioned proceeding by his attorneys, Peter Barack and Lawrence Walner, and respectfully meyes this Court for an Order pursuant to Rule 23 of the Federal Rules of Civil Procedure determining that this action shall be maintained as a plaintiff class action against each of the Defendants and each defendant class and certifying the propriety of the class described as follows:

All persons who are now, or who were, members of Local 705 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America or any other local affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, other than the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America itself, and who have purchased or otherwise acquired for value an interest in, through a contribution to or on whose behalf a contribution has been made to, any Teamster pension fund, which requires for the payment of a full retirement benefit a total period of service in excess of ten (10) years.

## Motion for Plaintiff Class Action Certification

Dated: October 8, 1975

/s/ PETER J. BARACK PETER J. BARACK

/s/ LAWRENCE WALNER
LAWRENCE WALNER
Attorneys for the Plaintiff

LAWRENCE WALNER
LAWRENCE WALNER & ASSOCIATES, LTD.
221 North LaSalle Street
Chicago, Illinois 60601
332-6576

Peter J. Barack 357 East Chicago Avenue Chicago, Illinois 60611 649-8372

#### Motion for Defendant Class Action Certification

IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

[Title Omitted]

Now Comes the Plaintiff, John Daniel, in the above captioned proceeding by his attorneys, Peter Barack and Lawrence Walner, and respectfully moves this Court for an Order pursuant to Rule 23 of the Federal Rules of Civil Procedure determining that this action shall be maintained as a defendant class action with three defendant classes and certifying the propriety of each defendant class described as follows:

- (1) All local affiliate unions of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, other than the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America itself, which sponsor, have established, or have a relationship with, direct or indirect, any Teamster pension fund established for the benefit of the members of such Teamster unions, which requires for the payment of a full retirement benefit a total period of service in excess of ten (10) years.
- (2) All trustees of all Teamster pension funds, established for the benefit of the members of any or all local affiliate unions of the International Brotherhood of Teamsters. Chauffeurs, Warehousemen

## Motion for Defendant Class Action Certification

and Helpers of America, other than the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America itself, and which require for the payment of a full retirement benefit a total period of service in excess of ten (10) years.

(3) All officers of all local affiliate unions of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, which sponsor, have established, or have a relationship with, direct or indirect, any Teamster pension fund, established for the benefit of the members of such Teamster unions, which requires for the payment of a full retirement benefit a total period of service in excess of ten (10) years.

Dated: October 8, 1975

/s/ PETER J. BARACK PETER J. BARACK

/8/ LAWRENCE WALNER
LAWRENCE WALNER
Attorneys for the Plaintiff

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PETER J. BARACK
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Chicago, Illinois 60611
649-8372

#### Amendment to Plaintiff's Motion for Defendant Class Certification

IN THE

United States District Court

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

[Title Omitted]

Plaintiff hereby amends his motion heretofore filed for certification of defendant classes by adding the following defendant class category:

All teamster pension funds established for the benefit of the members of any or all local affiliate unions of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, other than the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America itself, and which require for the payment of a full retirement benefit a total period of service in excess of ten (10) years.

LAWRENCE WALNER & ASSOCIATES, LTD. and Peter J. Barack,
Attorneys for Plaintiff

By: LAWRENCE WALNER PETER BARACK (LW)

LAWRENCE WALNER & ASSOCIATES, LTD. 221 North LaSalle Street Chicago, Illinois 60601 (312) 332-6576

Peter J. Barack 208 S. LaSalle Street Chicago, Illinois 60604 (312) 782-3188

## Second Amendment to the Complaint

IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

[Title Omitted]

Now comes the plaintiff, John Daniel, by his attorneys, Peter J. Barack and Lawrence Walner, and hereby amends the complaint by adding the following:

- 1. The following persons and entities are hereby added as defendants to the complaint and included in the caption: The Local 705 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America Pension Fund, a trust fund, by itself and as representative of all Teamsters pension funds; Frank Kratky, by himself and as representative of the Local 705 Pension Fund and of all Teamsters pension funds and of all Trustees of all Teamsters pension funds and as representative of all Officers of all Teamster unions similarly situated; and Bruno Fillipini, Peter Janopolous, Frank Bridge, W. Eugene McCarron, Ralph Nieders, Sr. and M.W. Siewert, Jr., by themselves and as representatives of the Local 705 Pension Fund and of all Teamster pension funds and of all Trustees of all Teamster pension funds.
- 2. Paragraph 9 is amended to add the following: Defendants Frank Kratky, Bruno Fillipini, Peter Janopolous, Frank Bridge, W. Eugene McCarron, Ralph Nieders, Sr., and M.W. Siewert, Jr. are also Trustees of the Local 705 Pension Fund and are named herein as defendants by themselves and as representatives of the Local 705 Pension Fund and of all Teamster pension funds and of all Trustees of all Teamster pension funds. Defendant Kratky is also

#### Second Amendment to the Complaint

an Officer of Local 705 and is also named herein as a defendant as representative of all officers of Teamsters International and of all local affiliates of Teamsters International.

Defendant Local 705, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America Pension Fund is a pension plan and trust fund organization.

3. All references in the complaint to Louis Peick shall be deemed to refer collectively to all of the individual defendants listed herein, both in their individual and in their representative capacities, and to the Local 705 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America Pension Fund, both by itself and in its representative capacity.

JOHN DANIEL, for himself and on behalf of all others similarly situated, Plaintiff, by

LAWRENCE WALNER & ASSOCIATES, LTD. and Peter J. Barack, Plaintiff's Attorneys,

By: LAWRENCE WALNER

LAWRENCE WALNER & ASSOCIATES, LTD. 221 North LaSalle Street Chicago, Illinois 60601 (312) 332-6576

Peter J. Barack 208 S. LaSalle Street Chicago, Illinc's 60604 (312) 782-3188

Minute Order of March 1, 1976

(See Opposite)

105 a

Cause No. 74. C	2865 Date Ma	rch 1,	197
Title of Cause	JOHN DANIEL, etc., v. INTERNATIONAL BROTHE	RHOOD C	F
	TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, and HE	LPERS	
Brief Statement of Motion	OF AMERICA, etc., et al		
	Motions by certain defendants to dismiss		
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Hand this memorandum to the Clerk.

Counsel will not rise to address the Court until motion has been as

IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

[Title Omitted]

This matter comes before the Court on motions by certain defendants to dismiss the complaint. The action is in six counts and seeks relief under the Securities Act of 1933 ("1933 Act"), the Securities Exchange Act of 1934 ("1934 Act"), the National Labor Relations Act ("NLRA") and pendent claims of common law fraud and deceit and breach of trust. Jurisdiction is invoked under 15 U.S.C. §§78a-78jj, 77a-77aa, 28 U.S.C. §§ 1337 and 185(a) and under principles of pendent jurisdiction.

Plaintiff is a resident of Illinois and a member of Local 705 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America ("Local 705"). Defendants are International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America ("IBT"), a labor union; Local 705; Louis Peick, a Trustee, and Officer of Local 705 Pension Fund; the Local 705 Pension Fund; and other Trustees of the Local 705 Pension Fund ("Trustees"). Moving defendants are IBT, Local 705 and Louis Peick. The Pension Fund and other named Trustees were added as defendants pending decision on these motions and no motions by those defendants are presently before the Court. The action is framed as a class action, both as to plaintiff and defendant classes.

### Minute Order, Memorandum Opinion and Order Entered March 1, 1976

The complaint alleges that plaintiff worked for Local 705 covered employers for a total of twenty-two and one-half years. This employment was uninterrupted with the exception of a several month absence beginning in December of 1960. This absence, resulting from an involuntary lay-off, was the basis for a decision by Trustees of the Local 705 Pension Fund to deny plaintiff his pension benefits.

Plaintiff alleges that this action by the Trustees, as well as defendants' maintenance and administration of the Pension Fund, is violative of the antifraud provisions of the federal securities laws, and of certain requirements of the NLRA and is in breach of defendants' common law trust and fiduciary duty.

Defendant IBT has filed a motion to dismiss only as to Counts I and II. Defendants Local 705 and Peick (collectively referred to as "local defendants") have raised additional challenges. The Court will consider their arguments in sequence.

#### COUNTS I AND II

Counts I and II of the complaint seek relief for defendants' fraudulent and intentional misrepresentations and omissions with respect to the sale to members of the plaintiff class of interests in Teamster union pension funds, all in violation of Section 17(a) of the 1933 Act and Section 10(b) and Rule 10b-5 of the 1934 Act.

Local defendants argue that Counts I and II are barred by the statute of limitations. It is not disputed that the Seventh Circuit holding in Parrent v. Midwest Rug Mills Inc., 455 F.2d 123 (7th Cir. 1972) provides that the applicable statute of limitations for an action for fraud under these sections is the three year period provided in the Illinois Securities Act, Ill. Rev. Stat. ch. 121½ §137.13(d) and that:

Under Illinois Securities Law, a buyer has three years to sue "not only from the date the right first accrues, but from the date the sale is completed". (455 F.2d at 128)

Plaintiff, however, argues that notwithstanding the three year statute of limitations, the federal tolling doctrine will delay running of the limitations period until the fraud is discovered "though there be no special circumstances or efforts on the part of the party committing the fraud to conceal it from the knowledge of the other party". Holmberg v. Armbrecht, 327 U.S. 392, 397 (1945). It was added in Parrent that the courts will:

read into the three-year limitation applied in the Rule 10-b count the 'equitable doctrine' that the statute does not begin to run until the fraud is discovered where a plaintiff injured by fraud 'remains in ignorance of it without any fault or want of diligence or care on his part . . . ' (455 F.2d at 128)

Defendants initially argue that plaintiff has admitted to actual knowledge, as evidenced by the fact that the complaint alleges that misrepresentations and omissions of material fact began as early as 1955 and have continued until the present time.

The Court does not find this argument persuasive. Plaintiff's allegations that misrepresentation began twenty years ago cannot be construed as an admission that plaintiff had knowledge of those misrepresentations at the time they were made. The crux of plaintiff's complaint is that he first learned of the fraud perpetrated upon him when he was denied his pension.

Defendants argue at length that plaintiff in fact had actual knowledge of the break in service rule and its application and consequences for many years. In support

Minute Order, Memorandum Opinion and Order Entered March 1, 1976

of their claim, they state that the eligibility rule was passed in early 1955 and communicated to the employee-participants, including plaintiff, by letter in April of that year. Relevant information was compiled in booklet form and sent to each participant in 1958 and 1969, years in which plaintiff was a participant. Likewise, the eligibility requirements were set out in letters of May 19, 1971 and June 11, 1971. Finally, since 1959 the trust agreement itself has been available for inspection at the Local 705 Pension Fund office or would have been sent to plaintiff's home upon his written request.

At the outset, plaintiff contends that defendants have incorrectly determined when the sale was completed, and have thus incorrectly applied the Parrent rule to the facts. Plaintiff argues that the "sale" was completed within the three year period preceding the complaint. In particular, he argues that there was a continuing fraudulent offer to plaintiff dating from 1955 to the time of his retirement on December 1, 1973. Alternatively, plaintiff argues that there was a sale for each pay period when plaintiff's employer made a contribution to the fund on his behalf and that many such contributions were made within the statutory period.

Taking all of defendants' arguments as true, the most that can be said is that plaintiff was put on notice that twenty years of continuous service was required. These arguments go only to one of several misrepresentations alleged in the complaint.

Plaintiff has stated in an affidavit that he had no actual notice of the ongoing misrepresentation. The question, then, becomes whether he should have known of the fraud in the exercise of proper diligence or care on his part.

First, as plaintiff correctly observes, there is a fiduciary relationship between the parties. In such a situation there

is a lesser degree of inquiry demanded of the trusting, yet defrauded plaintiff.

The concept of due diligence is not imposed within the frame of a rigid standard . . . A fraud . . . convincingly practiced upon its victim may justify much greater inactivity. The presence of a fiduciary relationship . . . bears heavily on the issue of due diligence.

Azalea Meats, Inc. v. Muscat, 386 F.2d 5, 9 (5th Cir. 1967). Accord, Racine v. Essex Wire Corp., (69-70 Transfer Binder) CCH Fed. Sec. L. Rep. ¶92,746 at 99,247 (N.D. Ill. 1970). The Court takes special note of the argument that the state of mind of the defrauded plaintiff had been anesthetized and put to rest by the "fraternal"—if not paternal—proclamations of defendants relative to their concern for plaintiff's welfare.

Second, the reasonableness of the degree of inquiry expected is properly gauged against plaintiff's level of education and sophistication. Plaintiff states in his affidavit that he has an eighth grade education. He further states that whatever information was provided by defendants was obfuscated by many pages of small print and couched in ambiguous or technical language.

Here in effect defendants ask for summary judgment on the question of whether plaintiff had actual knowledge or should reasonably have known of the fraud. It was correctly stated in Azalea Meats, supra:

Inevitably the factual issue of due diligence involves . . . the state of mind of the person whose conduct is to be measured against this test and it is simply not feasible to resolve such an issue on motion for summary judgment. (386 F.2d at 10)

The Court concludes that a genuine issue of material fact exists with respect to this issue. Certainly, this Court

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cannot say that plaintiff can prove no set of facts in support of his claim that he did not have actual knowledge and that he remained in ignorance of the fraud without any fault on his part. This is particularly true in view of the potential vagaries of the disclosure material, the amount of material surrounding the alleged disclosures and the general level of education and sophistication of the plaintiff.

Defendants make much of the fact that, according to the terms of the trust agreement, plaintiff had an unqualified right to have the Trustees construe the service rule at any time. This argument does not meet arguments raised by plaintiff relative to his state of mind and the resulting reasonableness of his failure to seek such a ruling.

Because of the Court's holding relative to plaintiff's knowledge of the facts, the Court need not reach the question of whether plaintiff instituted his action within three years after the time that the sale was completed.

All defendants argue that this Court does not have subject matter jurisdiction with respect to Counts I and II of the complaint and that those counts do not state claims upon which relief can be granted under either the 1933 or 1934 Acts.

Plaintiff's theory is that, as a member of Local 705, he acquired an interest in the pension fund of that Local, which interest constituted a security; that defendants made misleading statements of material fact and omitted to disclose material facts regarding the length and continuity of service requirements of the Local 705 Pension Plan; and that he suffered loss and injury as a result of such misstatements and omissions. These misstatements are alleged to have violated Rule 10b-5 and Section 10(b) of the 1934 Act, and §17(a) of the 1933 Act, each of which prohibits fraudulent practices and inadequate disclosure of material facts in connection with the sale of securities.

Defendants' arguments may be briefly summarized as follows:

- 1. Congress has viewed the securities laws as inapplicable to employee pension plans and has enacted other legislation designed specifically to deal with such funds; and
- 2. The Securities and Exchange Commission, ("SEC"), the agency charged with administration of the federal securities laws, has consistently ruled that no offer or sale of securities under the securities laws is involved in the establishment and operation of employee pension funds which, as here, are compulsory and non-contributory.

As pointed out by IBT, the overall purpose of the securities laws is to assure informed investment decisions by prospective purchasers of securities. This is accomplished by (a) requiring disclosures in registration statements and prospectuses where securities are offered to the public; (b) by periodic reports and proxy statements of publicly held companies; and (c) by antifraud provisions which broadly prohibit inadequate disclosure of material facts and other fraudulent practices in connection with sale of securities. Each of the two acts contains broad definitions of the terms "security", "sale" and "offer for sale".

Section 2(1) of the 1933 Act defines a security as follows:

Any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, or, in general, any interest or instrument commonly known as a "security"... (emphasis added.)

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The definition found in Section 3(a)(10) of the 1934 Act is substantially the same.

Section 2(3) of the 1933 Act defines sale as follows:

The term 'sale' or 'sell' shall include every contract of sale or disposition of a security or interest in a security, for value. The term 'offer to sell', 'offer for sale', or 'offer', shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value . . . . (emphasis added.)

Section 3(a)(14) of the 1934 Act contains a similar definition.

Defendants correctly observe that, apart from the general definitions set out above, the Acts, as originally enacted, offer no explicit answer to the question of whether the employee pension plans of the type referred to in the complaint involve an offer or sale of securities within the meaning of the federal securities laws. As originally enacted, neither Act contained any reference to such plans. Nor is any reference contained in their legislative history.

As a preliminary matter, the Court will consider the argument raised by defendants Local 705 and Peick that Section 17(a) of the Securities Act does not create a private cause of action. Defendants rely on Welch Foods. Inc. v. Goldman, Sachs & Co., CCH Fed. Sec. L. Rep. ¶94. 806 (S.D.N.Y. 1974) and Ferland v. Orange Groves of Florida, Id., ¶94,821 (M.D. Fla. 1974).

The Court agrees with plaintiff in his assertion that Section 17(a) impliedly provides for a private cause of action. There are several cases arising out of this district so holding, as well as a Seventh Circuit opinion. See Surovitz v. Hilton Holels Corp., 342 F.2d 596 (7th Cir. 1975); reversed on other grounds, 383 U.S. 363 (1966). See also Local 734 Trust v. Continental Illinois National Bank &

Trust Co.. (73-74 Transfer Binder) CCH Fed. Sec. L. Rep. ¶94,565 at 95,963 (N.D. Ill. 1974). Those cases relied upon by defendants are distinguishable.

The first question to be considered is whether the Securities Acts are, by their own terms, applicable to employee pension plans. The Court is of the opinion that they are facially applicable, and nothing in the Acts' legislative history suggests that a contrary interpretation is required. Indeed, examination of legislative history and hearing testimony discloses both Congress' and the SEC's recognition of this fact.

In 1934 the Senate proposed amendments to the 1933 Act which would have exempted from registration certain offerings made solely to employees of an issuer. The amendment was rejected in conference for the stated reason that participants in such plans may be in as great need of such protection as other members of the public. See H.R. No. 1838, 73 Cong., 2d Sess., at 41 (1934).

In the hearings which accompanied proposed amendments to both Acts in 1941, SEC Commissioner Purcell observed with reference to the Congressional action of 1934:

With this clear statement of Congress before it, the Commission certainly had no alternative but to interpret the act as applying to employee's plans which involve the sale of a security. Any plan under which employees are given the opportunity to place part of their earnings in a fund which is to be invested for their benefit and returned to them at a later date involves the offering of an "investment contract". In fact, many employee plans are in the nature of investment trusts and are indistinguishable in legal effect from investment companies offering securities to the public at large.

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Hearings on Proposed Amendments to Securities Act of 1933 and Securities Exchange Act of 1934 Before House Committee on Interstate and Foreign Commerce, 77 Cong. 1st Sess. 907, 908 (1941) ("1941 Hearings").

The Court concludes, therefore, that to the extent employee pension plans in fact involve the sale of securities, the Securities Acts are by their own terms applicable to such terms.

The Court must next determine whether, as defendants suggest, enactment of specialized pension legislation disclosed Congressional intent that the Securities Acts, including the antifraud provisions, are inapplicable to pension plans, notwithstanding the fact that such plans may be securities within the meaning of those Acts.

Defendants devote many pages in their extensive briefs to discussion of the burgeoning field of pension legislation, including the Investment Company Act of 1940 ("1940 Act"), the 1958 Welfare and Pension Plans Disclosure Act ("1958 Act"), the Investment Companies Amendment Act of 1970 ("1970 Act") and the Employee Retirement Income Security Act of 1974 ("1974 Act"). They argue at great length that this massive body of legislation is indicative of Congress' belief that private pension plans were afforded no protection by the federal securities laws, and that such legislation filled a large gap in the law.

After examining defendants' arguments and the legislative history itself, the Court has ascribed a significance to this legislation which does not agree with defendants' view. At the outset, it should be noted that, except in those cases where recognized securities were offered by an employer for voluntary purchase by employees, the SEC acted on the assumption, consistent with existing legal thought, that employee pension plans were generally "non-contributory" and "involuntary", and therefore resulted in no sale and no nexus to the securities laws.

It follows then, that the SEC's position with respect to applicability of the securities laws to pension plans reflected this assumption, which is here challenged by plaintiff. As explained by Commissioner Purcell during the 1941 Hearings:

[E]ven where the plan involves securities, registration is not required for the many cases where the employees pay nothing for the securities, but receive an interest in the investment fund by way of bonus from their employer; for, of course, a gift is not a sale, and the Securities Act is concerned only with sales of securities.

Similarly, compulsory plans do not require registration. If a plan is so set up that participation in it is a condition of employment, the Commission has taken the position that, as in the case of a noncontributory or bonus plan, there is no sale involved. The purpose of the registration provisions of the Securities Act is to disclose to prospective investors the essential facts about securities which they are asked to buy, and if the employees are given no choice as to whether to buy or refuse to buy there hardly seems any point in the registration process. As a practical matter, people do not decide, it seems to me, to take jobs or leave them because they like or dislike the company's investment plan. (1941 Hearings at 907, 908, 950)

It is logical to conclude, then, that pension legislation was generated in part out of a conviction that the Securities laws did not protect pension plans because they did not involve sales, as well as recognition of the need for specialized treatment.

This latter factor is an important one. Assuming, arguendo, that pension plans are securities and come within

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the purview of the Securities laws, their unique characteristics nonetheless give rise to a need for special regulation. This alone explains the proliferation of pension legislation. Indeed, the very fact of their recognition as securities could account for the extensive and detailed requirements relative to disclosure and administration of

these plans.

In the 1970 Act Congress provided that certain types of pension funds or profit sharing plans, described in Sectio 3(a) as securities, which meet the requirements of Section 401 of the Internal Revenue Code would be exempted from registration under Section 5 of the 1933 Act. The Act also provided for a similar exemption to registration under Section 3(a)(12) of the 1934 Act. In any event, as is clear from the statutory language, Congress recognized such pension funds as securities.

Examination of the legislative history surrounding these various enactments of pension legislation leads to the conclusion that these Acts were designed to compl[e]ment the securities laws rather than displace them. Enactment of this legislation is in no way inconsistent with the view that Congress regarded pension funds as unique forms of securities which were not adequately regulated by the securities laws.

As was made particularly clear in the Congressional Reports accompanying enactment of the 1974 Act, that Act was concerned with ongoing administration of pension funds, rather than with any sales in connection therewith. Thus, both the Senate and House Reports expressed concern over the absence of effective federal legislation directed at assuring equitable and fair administration of all pension plans. Specifically, the lack of federal controls was seen with respect to protection of the employee's security in his pension rights, rather than prevention of fraud in the sales or acquisition of that interest. Consis-

tent with this view, the 1974 Act imposed criminal sanctions for any attempt to interfere with any employee's attainment of rights under the Act. Similarly, as noted in these reports, the 1958 Act criminalized only malfeasance with respect to administration of such plans, including theft, embezzlement, bribery and kickback. See H.R. No. 93-533, 3 U.S. Code Cong. and Adm. News, 4639 (1974); S.R. No. 93-127, 3 U.S. Code Cong. and Adm. News, 4838 (1974).

It is significant to note that this entire body of pension legislation is concerned with administration of such funds, so as to protect the interest of its participants, rather than regulation of circumstances of entry into the plan.

This Court holds that Congress has not demonstrated, through extensive pension legislation or otherwise, any intent to make securities laws inapplicable to employee pension funds. Accordingly, this Court finds that, to the extent any employee pension plan involves a sale of a security within the meaning of the federal securities laws, those laws, including their relevant antifraud provisions, will apply.

Further, assuming arguendo that defendants are correct in their assertion that pension legislation disclosed Congressional intent that pension plans such as the Local 705 Pension Plan not be procedurally regulated by the Securities Acts, it does not necessarily follow that those plans are beyond reach of the antifraud provisions.

Both the 1958 Act and the 1970 Act contain savings clauses providing for the continued application of all other relevant legislation. The 1958 Act provided:

The provisions of this [Act]... shall not be held to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of the United States or of any State affecting the operation or administration of employee wel-

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fare or pension benefit plans . . . (29 U.S.C. §309(b)). (emphasis added.)

The provision in the 1970 Act is essentially the same.

Further, the House Report accompanying the 1970 Act contained this explicit comment:

[this section] should exempt . . . bank . . . administered . . . pension plans from the registration and reporting requirements of the Federal Securities Act, but it does not exempt them from the antifraud provisions of those acts.

H.R. No. 91-1382, 91st Cong. 2d Sess. at 10 (1970). See also S.R. No. 91-184, 3 U.S. Code Cong. and Adm. News, 4897, 4907 (1970). The Reports suggest that such plans were exempted from registration so as to ease potential hardship on small banks.

Nonetheless, those considerations which might justify a plan's exemption from registration or even its exemption from the procedural regulatory provisions of the securities laws do not operate to prevent application of the antifraud provisions. As stated by one commentator:

Since these antifraud provisions do not impose an undue burden on anyone, there is no reason why they should not remain as remedies available to employees for use in cases where fraud of the kind covered by these sections has been committed.

Mundheim and Henderson, Applicability of the Federal Securities Laws to Pension and Profit Sharing Plans, 29 Law and Contemporary Problems, 795, 814 (1964).

The Court having determined that the antifraud provisions of the Securities Acts are applicable to those pension plans which involve sales of securities, the Court must next

ascertain whether plaintiff's acquisition of an interest in the Local 705 Pension Fund constituted a sale of a security within the meaning of those Acts. The operative antifraud provisions of both Acts require: (1) use of the jurisdictional means; (2) making of material misrepresentations, omission to state material facts or use of manipulative or fraudulent devices, in connection with: (3) the sale—of a security. For purposes of determining applicability of the antifraud provisions, use of the mails as the jurisdictional means and omission to state material facts are not in dispute. The Court turns first to the question of whether plaintiff's interest in the Local 705 Pension Fund was a security.

Section 2(1) of the 1933 Act defines security in pertinent part as:

any profit-sharing agreement, . . . [or] investment contract . . .

The definition found in Section 3(a)(10) of the 1934 Act is substantially the same.

In SEC v. W. J. Howey, Co., 328 U.S. 293, 299 (1945), the Supreme Court observed that federal securities legislation:

embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and varied schemes devised by those who seek the use of the money of others on the promise of profits. (328 U.S. at 299)

Because the 1933 and 1934 "Acts were designed to protect the American public from speculative or fraudulent schemes... Congress defined the term 'security' broadly and the Supreme Court in turn has construed the definition

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liberally." SEC v. Glenn W. Turner Enterprises, Inc., (72-73 Transfer Binder) CCH Fed. Sec. L. Rep. ¶93,748 at 93,271 (9th Cir. 1973).

Plaintiff argues that in applying this definition of security to characterize his interest in the Local 705 Pension Trust Fund, the Court must:

be guided by the familiar canon of statutory construction that remedial legislation should be construed broadly to effectuate its purposes. The Securities Exchange Act quite clearly falls into the category of remedial legislation. One of its central purposes is to protect investors through the requirement of full disclosure... In searching for the meaning and scope of the word "security" in the Act, form should be disregarded for substance and emphasis should be on economic reality.

Tcherepnin v. Knight, 389 U.S. 332, 336 (1967). See also SEC v. Capital Gains Research Bureau, 375 U.S. 180 (1963). Recognizing this need for a liberal construction of the word 'security', the courts have construed that word as bringing within the ambit of the Acts "many forms of transactions which, on their face, do not appear to be securities in the commercial sense of the word." Feldman & Rothschild, Executive Compensation & Federal Securities Legislation, 55 Mich. L. Rev. 1115, 1117 (1957).

Thus the courts have held such economic interests as self-improvement courses, SEC v. Glenn W. Turner Enterprises, Inc., supra; beaver farms, Continental Marketing Corp. v. SEC, 387 F.2d 466 (10th Cir. 1967); whiskey sales contracts, Penfield Co. of Cal. v. SEC, 143 F.2d 746 (9th Cir. 1944); pyramid sales schemes, SEC v. Koscot Interplanetary, Inc., 497 F.2d 473 (5th Cir. 1974); variable annuities, SEC v. Variable Annuity Life Ins. Co., 359 U.S.

65 (1959); and mineral leases, *Roe* v. *U.S.*, 287 F.2d 435 (5th Cir. 1961) to be securities.

Plaintiff characterizes his interest in the Local 705 Pension Fund as an investment contract within the meaning of the Securities Acts, a proposition only inferentially challenged by local defendants and unchallenged by IBT. The Supreme Court in SEC v. W.J. Howey Co., supra, defined an investment contract to mean:

A contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, it being immaterial whether the shares in the enterprise are evidenced by formal certificates or by nominal interest in the physical assets employed in the enterprise. (328 U.S. at 288, 289)

See Koscot Interplanetary, Inc., supra. Here plaintiff argues that the Local 705 Pension Fund contains all elements of the Howey rule, in that money is invested in a common enterprise, management of which is committed to a third party and from which income and profits are expected.

First, plaintiff characterizes the Local 705 Pension Fund which receives these contributions as the common enterprise. Plaintiff correctly observes that pension plan contributions are now uniformly recognized as part of employee wages. S. Rep. No. 1440, 85th Cong., 2d Sess. 4 (1958). See also Inland Steel v. NLRB, 77 NLRB 2 (1948), 170 F.2d 247 (7th Cir. 1948), cert. den. 336 U.S. 960 (1949). These bargained-for contributions represent a substantial economic portion of those wages and represent the employee's investment.

Second, the trustees have the sole power of control over the common enterprise and investment of all assets contained therein. See Amended Trust Agreement, Art. 4, Sections 1, 2 and 3. Minute Order, Mcmorandum Opinion and Order Entered March 1, 1976

Finally, profits are expected from the successful management of the funds in the form of retirement benefits. That such benefits are fixed does not eliminate the element of profits. Plaintiff analogizes this to the fixed interest rate on a bond or debenture. The total amount of expected payout for any member will exceed the aggregate of those contributions made on his behalf. This excess will constitute a profit in the form of capital gains, interest and dividends and other accumulated earnings realized from successful management of the trust. Also, there is no warranty that the trust will be able to fund the supposedly fixed benefits due to members of the plaintiff class, and the holders thus bear an element of risk in this investment of their wages. See Silver Hills Country Club v. Sobieski. 361 P.2d 906 (Cal. 1961).

The conclusion that a beneficial interest in Local 705 Pension Fund is a security finds further support in public policy underlying the remedial nature of the federal securities laws which are aimed at prevention of frauds in the sales of securities and protection of investors. In light of this special remedial purpose, one commentator has characterized a security as an interest distinguished from the generality of interests:

"so as to create a need for the special fraud procedures, protections, and remedies provided by the securities laws." Coffey, the Economic Realities of a "Security": Is there a More Meaningful Formula, 18 West. Res. L. Rev. 367, 373 (1967)

Plaintiff points to the magnitude of the pension funds, now estimated to exceed 150 billion dollars, and their economic importance to over 30 million Americans who rely on such plans for their financial security. According to one recent Senate study, as few as eight percent of those

participants in pension plans with vesting requirements of eleven years or more will ever receive any pension benefits. Interim Report of Activities of Private Welfare and Pension Plan Study, S. Rep. No. 92-634, 92nd Cong. 2nd Sess., at 15,115-153 (1972).

Plaintiff argues, and the Court agrees, that there is a great need for the application of the special fraud provisions, protections and remedies of the Securities Acts to plans such as the Local 705 Pension Fund. This need is not met by either qualification under Section 401 of the Internal Revenue Code or by filings under the 1958 Act or other pension legislation. Disclosure under the Code "does not necessarily satisfy Securities Act disclosure standards which require that the facts must be disclosed in a form which is clearly understandable to the ordinary investor." Mundheim & Henderson, supra at 806. The primary purpose of the Code is not protection of the investor, but rather production of revenue and prevention of tax evasion.

Likewise, under the 1958 Act, the participant must take the initiative in seeking information to which that Act says he is entitled. That is because the Act is designed to regulate misuse of funds and disclosure rather than fraud. The Securities Acts, however, place the burden of disclosure on the seller of a security. This is in recognition of the fact that fraud, by its very nature is practiced upon the unknowing. An employee who is unaware of a fraud being perpetrated upon him is not benefited by a provision which requires disclosure only upon his request.

Accordingly, the Court holds that plaintiff's interest in the Local 705 Pension Fund is an investment contract within the meaning of the Securities Acts and further that this result is consistent with the remedial purpose of that body of legislation. That being so, the Court does not reach local defendants' argument that plaintiff's inMinute Order, Memorandum Opinion and Order Entered March 1, 1976

terest cannot be described as an interest in a profit-sharing

plan.

Finally, the Court must determine whether plaintiff's acquisition of an interest in the Local 705 Pension Fund constituted a sale within the meaning of the securities law. Sale is defined in Section 2(3) of the 1933 Act as

Every . . . disposition of a security or interest in a security, for value.

The definition found in Section 3(a)(14) of the 1934 Act is substantially the same.

It is apparently conceded that whether the transfer involved a gift, sale or otherwise, there was a disposition and that the only issue here is whether this disposition was for value.

Defendants argue that the complaint itself discloses that the Local 705 Pension Fund is both "involuntary" and "non-contributory", in that it is funded by employer contributions and that members of the Local come under this plan automatically by reason of their union membership and employment, and not by any choice on their part. Such plans, defendants argue, have been consistently found by the SEC to lack the "sale" element.

According to defendants the SEC has declined to assume that an employee who participates in a pension plan which is an incident of his employment, and in exchange for which he pays no additional consideration, and to which he makes no contributions, decides whether or not to work because of the nature and terms of the plan. The employee in this situation is not an investor. It is particularly true, they argue, that there is no choice of whether or not to participate where, as here, the pension plans are typically negotinted on an industry-wide basis in the local area and every covered employer in that industry in that area contributes

to the same plan on the same basis for each employee who belongs to the union.

As has been earlier discussed in this opinion, the SEC has taken the position that with respect to those employee pension plans characterized as "involuntary" or "non-contributory", there is no sale within the meaning of the Securities Acts. In cases of non-contributory plans, the SEC has found that employees did not receive their security interests for value, but rather as gifts. Alternatively, in cases of involuntary plans, the SEC took the position that employees made no investment decision. Since the purpose of the securities laws was to assure informed investment decisions by prospective purchasers of securities, the SEC concluded that if no investment decision is being made, these laws do not logically apply.

Plaintiff responds that in this case there was a disposition for value. He argues that the value element was satisfied by the giving of services or, alternatively, by the contribution of a portion of wages. Plaintiff asserts that in view of the vast amounts of money contributed by employers to employee pension plans—now estimated to exceed 150 billion dollars—the only responsible view is that such monies are given in return for value rendered.

Further, the Local 705 Pension Fund is an object of collective bargaining. Both Congress and the courts have adopted the view that employer contributions to employee pension plans constitute a part of the total wage structure. See S. Rep. No. 1440, supra, and Inland Steel, supra. Thus plaintiff's consideration includes not only services rendered but a portion of wages received.

These bargained for employer contributions on behalf of the members of the plaintiff class represent a substantial economic portion of the wages given to employees in consideration of services performed. As part of the employee's contribution, they constitute the employee's giving of value

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for his interest in the plan. The Court agrees with plaintiff that economically there is no distinction between the facts here and the situation whereby the employee first receives as part of his wages the employer contribution in cash and then pays such cash over to the pension fund.

This view that the employee has given value has already received support from the courts. In Collins v. Rukin. 342 F.Supp. 1282 (D. Mass. 1972) the Court held that plaintiff's performance of services satisfied the value requirements of a sale. The Court there stated:

the broad design of the federal securities laws should not be frustrated by restrictive application of the purchase-sale requirements . . . [and] the wording of each definitional section warrants non-restrictive interpretation of the concept of "sale" . . . (342 F.Supp. at 1289-90).

See also SEC v. Addison, 194 F.Supp. 709 (N.D. Tex. 1961).

The Court, therefore, is of the opinion that plaintiff gave value for his interest in the Local 705 Pension Fund. Further, the Court is of the opinion that, contrary to SEC policy and defendants' assertion, plaintiff's acquisition of an interest in that Pension Fund was voluntary.

The employees must vote on the package negotiated by the union which makes a division of increased increment of income between salary and pension benefits. The Court is persuaded that few members would ever vote for an allocation to a pension increase in lieu of a greater salary increase if they knew at the time of the vote that they would have an eight percent or smaller chance of ever realizing any benefit from the increased pension allocation. The final decision of such allocation to pension rather than salaries is with the employees and they thereby make the contribution from the total wage package.

This decision to accept or reject the package is, furthermore, a voluntary one. The fact that a majority vote may prevail does not negate the fact that this majority decision is but an aggregate of many individual decisions. Moreover, the fact that individuals of a contrary mind may be bound by the majority decision does not mean that such individuals lack voluntary participation in the plan.

To the extent that SEC policy results in a conclusion that there is no voluntary purchase, the Court finds that it comports neither to logic nor economic reality. Such a policy in effect singles out purchasers of one type of security, i.e., a pension fund interest, for special scrutiny by looking into their subjective state of mind to ascertain the "voluntariness" of the purchase, and therefore, the existence of an "investment decision". In no other circumstance does the SEC look behind the purchase for the state of mind of the investor, to determine whether in fact the purchaser "desired" to make the purchase. The investment decision is presumed from the act. Likewise, it must be presumed here.

The Court, consistent with the rule of *Tcherepnin* v. *Knight*, that form be disregarded for substance, finds that plaintiff gave value for his interest in the Local 705 Pension Fund, both in the form of services and a portion of his cash wages. This conclusion finds further support in the policy considerations alluded to in *Collins*, supra.

The Court makes no finding here beyond the narrow holding that the complaint alleges the sale of a security for purposes of application of the antifraud provisions of the Securities Acts, and that the complaint alleges violations of those provisions. The Court makes no finding with respect to applicability of any other section of those Acts to employee pension plans such as the one here litigated.

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#### COUNT VI

Local defendants next argue that Count VI should be dismissed because it is barred by the statute of limitations and because this Court lacks federal subject matter jurisdiction under Section 302(c)(5) and (e) of the NLRA.

As a preliminary matter, local defendants assert that Local 705 should be dismissed as to this count because Section 302 contemplates relief only against the Pension Fund. The Court rejects that argument as without support or merit.

Local defendants next claim that any action against the Trustees is barred by the applicable Illinois statute of limitations. Although the issue of whether a state statute of limitations should be applied in a federal court suit under Section 302(e) has not been decided, state limitation periods have been applied in federal court suits under Sections 301 and 303 of the NLRA. UAW v. Hoosier Cardinal Corp., 383 U.S. 686 (1966); Operating Engineers Union v. Fishbach & Moore, Inc., 350 F.2d 936 (9th Cir. 1965).

In Hoosier the Supreme Court held that the issue of timeliness in a Section 301 suit should be determined as a matter of federal law, by reference to the appropriate state statute of limitations. The Court stated that:

characterization of the action for purposes of selecting the appropriate state limitations provision is ultimately a question of federal law. But there is no reason to reject the characterization that state law would impose unless that characterization is unreasonable or otherwise inconsistent with national labor policy. (383 U.S. at 706.)

After analyzing the six-month statute of limitations found in Section 10(b) of the NLRA relating to unfair labor

practice charges, the Court concluded that the provision reflected the federal goal of relatively rapid disposition of labor disputes.

Defendants argue that the same goal of prompt disposition of disputes should apply in a Section 302 action. With that standard in mind, they attempt to characterize the nature of the action. Defendants urge that because of the importance of these pension funds to many people, any challenge to the fund's structure should be made at the earliest time.

The parties discuss in their briefs the appropriate characterization of this action, so as to determine the proper period of limitations. In the opinion of this Court, this action could be characterized either as a breach of trust action or one to enforce a statutory right. In either event the five-year period of limitation found in Ill. Rev. Stat. Ch 83, §16 (1973) would apply, and this Court so holds. Notwithstanding that determination, regardless of how the action is characterized, it is not time-barred.

The essence of plaintiff's affidavit is that he had no actual knowledge of defendant's wrongful acts which are alleged in the complaint. For those reasons, more fully set out in the preceding discussion of the limitations question relative to Counts I and II, the Court holds that there is a genuine question of material fact as to whether plaintiff actually knew or should reasonably have known of the existence of facts giving rise to this cause of action.

Accordingly, defendants' motion to dismiss Count VI based on the statute of limitations is denied.

Local defendants next challenge this Court's jurisdiction to hear Count VI, which alleges a violation of Section 302 (c)(5) of the NLRA requirement that all union pension funds shall be for the sole and exclusive benefit of the employees.

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First, according to defendants, the interpretation and application of the "for the exclusive benefit of employees" provision is within the primary jurisdiction of the Internal Revenue Service which approved the plan and its amendments. Defendants argue that Local 705's service rule has been an integral part of the plan since its inception in 1955 and that it was considered and approved by the IRS in granting the Pension Fund's original qualification and exemption under Sections 401 and 501 of the Code. Section 401(a) of the Code, like Section 302(c)(5) of the NLRA contains a "for the exclusive benefit of" employees requirement. Therefore, argue defendants, Local 705 Pension Fund's exemption from income taxes immunizes its eligibility rule from suit under the NLRA via the doctrine of primary jurisdiction.

The Court dealt with and rejected a similar argument in the case of *Smith v. Peick*, No. 72 C 2968 (N.D. Ill., June 30, 1975). The Court rejects it here for like reasons as not warranting further discussion.

Second, defendants argue that Count VI does not state a claim for relief under Section 302(c)(5). It must be noted at the outset that this same argument was presented to this Court in *Insley* v. *Joyce*, 330 F.Supp. 1228 (N.D. Ill. 1972). In that case Judge Will held that a pension fund's eligibility requirements may violate Section 302(c)(5) of the NLRA as not being for the "sole and exclusive benefit of the employees," at least to the extent of surviving a motion to dismiss for lack of subject matter jurisdiction or failure to state a claim.

He reasoned that the ambignous language of Section 302 and its ambignous legislative history supported the conclusion that a "structural" violation of Section 302(e)(5) occurred where a pension plan excludes "a sizeable number of union members, with no reasonable purpose behind their

exclusion . . ." Judge Will stated that the standard to be applied is whether the eligibility requirement is "arbitrary and capricious", a standard which "would appear to be litigable only in the Federal courts." 330 F.Supp. at 1233-4.

As an example of how such an eligibility requirement could violate the "exclusive benefit" provision of Sub-Section (c)(5), the Court hypothesized that the Local's pension fund's "break-in-service" rule:

might primarily be designed to strengthen the union by encouraging employees to work only... [for contracting employers] and to penalize employees who work or who have worked for other truckers.... If the purpose and effects behind this provision are thus primarily to benefit the union and penalize employees, we clearly are presented with a trust fund that possesses the structural deficiency of not being solely for the benefit of employees. (330 F.Supp. at 1234).

This Court adopted Judge Will's ruling in Smith v. Peick, supra.

Defendants argue that Judge Will was in error in that:
(1) the legislative history makes it clear that Section 302(e) does not give federal courts jurisdiction over suits challenging trust fund eligibility provisions; (2) the decisional law does not support a finding that an eligibility provision constitutes a structural violation of Section 302;
(3) the Mine Workers Pension Fund cases do not support the Insley holding; (4) the "sole and exclusive benefit of employees" provision is a traditional state law fiduciary concept; and (5) an eligibility provision which encourages longevity of service with contracting employers and thereby indirectly encourages union membership is not unlaw-

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ful as a matter of law. Defendants further rely on Cuff v. Gleason, 515 F.2d 127 (2nd Cir. 1975) as controlling authority.

The Court remains in agreement with Judge Will's ruling in Insley and this Court's ruling in Smith v. Peick, supra. The case of Cuff v. Gleason, supra does not require a contrary result. In Cuff the Second Circuit approved the language of the lower court which had held that:

[Section] 302(c)(5) of the LMRA would not confer federal jurisdiction where an application of a trust pension plan rather than a collective bargaining agreement, (cite omitted) was involved and the specific requirements of  $\S 302(c)(5)$  are met (cite omitted) (emphasis added) (515 F.2d at 128).

That section specifically requires that the trust fund be "established . . . for the sole and exclusive benefit of the employees of such employer."

The issue in *Cuff* as defined by the Court itself was "whether the application of rules of a jointly-administered pension trust to an individual claim was arbitrary and capricious." 515 F.2d at 128.

Here plaintiff challenges not the mis-application of a rule which is itself proper, but the legality of the rule itself. Here, as in *Insley*, "plaintiff has alleged and put into controversy an exclusionary eligibility requirement (viz., the . . . break in service rule) concerning the defendants' \$302 trust." 330 F.Supp. at 1233. See also *Lugo* v. *Employees Retirement Fund of the Illumination Products Industry*, 366 F.Supp. 99, 102 (E.D.N.Y. 1973).

To the extent that Cuff stands for the proposition that a violation of Section 302 occurs only at the time of establishment of a rule and does not continue for as long as that rule is enforced, this Court declines to follow it. This Court adopts Judge Will's reasoning pertaining to Con-

gressional intent and legislative history as the better reasoned view.

Defendants' motions to dismiss the complaint are denied in their entirety.

ENTER: /s/ ALFRED Y. KIRKLAND Alfred Y. Kirkland, Judge

DATED: March 1, 1976

#### Affidavit of Joseph E. Dean

IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

[Title Omitted]

#### **AFFIDAVIT**

JOSEPH E. DEAN, being duly sworn deposes and says:

My name is Joseph E. Dean. I am an actuarial consultant for the Wyatt Company in Washington, D.C. I submit this affidavit in support of the IBT Memorandum in Opposition to Plaintiff's Motion for Plaintiff and Defendant Class Action Certification and Determination in the above-captioned case.

1. I am a member of the American Academy of Actuaries and have served as a consultant for the Wyatt Company since 1966. The clients for whom I perform consulting services include unions, corporations, multiemployer pension plans, trade associations, federal government agencies and local governmental bodies. Those services consist of consultation on all aspects of pension plan design problems and actuarial valuations regarding such plans. I am thoroughly familiar with the Employee Retirement Income Security Act ("ERISA"), which is the most recent and comprehensive federal legislation pertaining to employee benefit plans. I am enrolled by the Joint Board for Enrollment of Actuaries to perform actuarial services under ERISA. Prior to 1966 I was employed for twelve years by New York Life Insurance Company in essentially similar work.

- 2. Among the clients of the Washington office of the Wyatt Company are the Central States, Southeast and Southwest Areas Pension Plan, and several other multi-employer plans. I therefore have a general familiarity, not only with the many plans for which I have performed consulting services during my twenty-two years in the profession, but I am also acquainted with the substantive provisions and workings of multiemployer pension plans including Teamster pension plans.
- 3. Although the consulting services that I perform differ markedly with regard to any particular plan, the following is illustrative of the manner in which the substantive provisions of a typical multiemployer pension plan are constructed.
- (a) I am advised by the trustee or administrator of the level of contributions, the amount of funds available, and the general types of benefit provisions that should be included in the plan. Additionally, I am provided with a list of the members' dates of birth, length of service, and other pertinent data. From the above-listed information, I determine the nature and amounts of benefits that can be provided and make appropriate recommendations to my clients.
- (b) The first order of priority is usually to provide benefits to those individuals with long periods of service who have reached a particular age such as 65 years in order to provide security to members at normal retirement age. If the plan is to provide that past service will constitute credited service, some members will immediately become eligible for benefits. This and other factors must be considered in light of the funds available.
- (c) When subsequent negotiations produce contribution levels in excess of those needed to provide adequate pensions for those members with long years of covered service

## Affidavit of Joseph E. Dean

who have reached retirement age, the next task is to decide the cost factor for providing additional benefits such as vesting, early retirement, disability pensions, survivors' pensions, and continued eligilibity during periods of layoff, military service and disability. The provisions of the plan are thereby structured in accordance with the wishes of the trustees representing the plan participants.

- 4. There are many factors which must be considered in formulating the substantive provisions of a plan constructed in accordance with sound actuarial practice. The following are some of those factors.
- (a) The cost factor for a particular retirement benefit is related to the length of service requirement. For example, a 50 cent contribution for each hour worked may yield adequate funds to allow the trustees to provide a \$400 monthly benefit at age 60 after 20 years of service; i.e., 12½ cents per hour is required for each \$100 of monthly pension. If, however, retirement is allowed at age 60, but with 10 years rather than 20 years of service, the same funds (i.e., produced by the 50 cents per hour contribution), may only allow for a benefit of \$360 per month. The cost factor is now about 14 cents per hour for each \$100 of monthly benefit given a 10 year service requirement as opposed to 12½ cents per hour for each \$100 monthly benefit given a 20 year service requirement.
- (b) If for a given level of contribution, the age for a full retirement benefit is reduced from 60 years to 55 years, then there must be a correlative actuarial reduction in benefits. The factors that are considered in such a reduction are the following:
- (1) during the 5 year period between ages 55 and 60, members not yet retired would have contributions made into the fund on their behalf;

- (2) those additional contributions would earn interest during that period; and
- (3) certain members not yet retired would die between the ages of 55 and 60, thereby reducing the size of the class eligible for a full retirement benefit.
- (c) Break-in-service is also a factor which is taken into consideration in the determination of a benefit formula. For example, one plan may provide that a member loses no credit as long as his break-in-service is no greater than 5 years, while a second plan may provide for the payment of benefits only if the member has uninterrupted service credits. The former plan would result in a greater number of persons retaining eligibility compared to the "uninterrupted service" plan. As a result, a greater amount of funding would be required in order to yield the same monthly benefit.
- 5. As a result of knowledge that I have obtained from performing actuarial services for certain Teamster pension funds and as a result of knowledge of Teamster pension funds that I have obtained from contact with such funds during my twenty-two years in the profession, the following observations can be made regarding Teamster pension funds.
- (a) All services that I perform are in accordance with sound actuarial principles.
- (b) Each plan is established so that it can function as an entirely autonomous unit under the control and direction of the particular trustees and administrators.
- (c) There are marked differences in the funding media. For example, trustees of some plans make investments either directly themselves or through their agents while the investment function for other plans is performed by

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#### Affidavit of Joseph E. Dean

insurance or investment companies, or a combination of both methods.

- (d) There are marked differences in the substantive provisions of the various pension plans.
- (e) Each trust agreement provides that its provisions should be interpreted in accordance with the law of a particular state. Usually the law of the state where the trust was created is the governing law.
- (f) Members are usually informed of the provisions contained in the various plans by distribution of informational booklets. Each such booklet is different in substance and form. Additionally, the role I play in the formulation of the booklets differs markedly, depending upon the wishes of the particular trustees and administrators. For example, some trustees and administrators ask that I actively participate in the formulation of the booklet while others request that I review the final draft.
- 6. I have been apprised by 1BT counsel of the general allegations contained in the complaint and other moving papers in the above-captioned case. With regard to plaintiff's claim that the mailings and communications to Teamster members do not disclose "the actuarial likelihood that any Teamster member will cvcr receive any pension benefit" (Plaintiff's Memorandum in Support of Class Action Certification, p. 4), I make the following observations.
- (a) The foregoing statement of actuarial likelihood is misleading because of the erroneous inference likely to be drawn that the statement of probability refers to a particular member's likelihood of receiving benefits. Such a statement cannot be made because probabilities may be calculated only with regard to the entire group. Therefore, the likelihood that a particular Teamster member will receive a benefit is impossible to calculate.

- (b) I have never seen any pension booklet, Teamster or otherwise, which contains such a statement.
- (c) Based upon the speculative and misleading nature of calculating the "actuarial likelihood that any Teamster member will ever receive any pension benefit," it is my opinion that the inclusion in a pension plan informational booklet of such a statement would not be advisable.
- 7. ERISA was enacted on September 2, 1974. Under ERISA, plans in effect on or before January 1, 1974 need not comply with the substantive provisions affecting eligibility, breaks-in-service, length of service, and vesting (among other things) until the plan anniversary beginning after December 31, 1975. I have been advised by IBT counsel that the Local 705 plan is in this category and that its plan year begins on February 1 and ends the following January 31. Therefore, the date on which it must have complied with these provisions was February 1, 1976.
- 8. Based upon the data provided to me by IBT counsel, if Mr. Daniel had been employed under a plan subject to the vesting and break-in-service rules of ERISA, he would have qualified for a full retirement benefit for the following reasons:

#### (a) Break-in-Service:

- (1) Under the break-in-service provision of ERISA. Daniel probably did not incur a break-in-service in 1960 and thus all of his years of service must be counted to determine the percentage of the full retirement benefit in which he is vested;
- (2) Even if Daniel did incur a break-in-service in 1960, all of his years of service prior to and after 1960 would have to be counted to determine the percentage of his full retirement benefit in which he is vested.

## Affidavit of Joseph E. Dean

Under the break-in-service rules of ERISA, a member of a plan is credited with a full year of service if he has completed at least 1,000 hours of service in a 12 consecutive month period. If the member completes less than 1,000 hours of service but more than 500 hours of service, the member has not yet incurred a one year break-in-service. A one year break-in-service is incurred only if the member completes 500 or less hours of service.

Even if a member incurs a one year break-in-service, the years of service prior to such break must be credited to the member unless the number of consecutive one year breaks-in-service equals or exceeds the aggregate number of years of service of the member prior to his break-in-service. Accordingly, either because Daniel did not incur a break-in-service in 1960 or because his years of service prior to 1960 exceeded his one year break-in-service for 1960, all of his years of service must be counted to determine the percentage of his full retirement benefit in which he is vested.

- (b) Vesting: Under any one of the three minimum vesting standards set forth in ERISA, Daniel's age and years of service would qualify him for the full retirement benefit payable under the plan; i.e., he would be vested in 100 percent of his retirement benefit.
- 9. At the request of IBT counsel, I constructed a hypothetical group which would be generally representative of Teamster pension funds. The data upon which the hypothetical group is based is representative of the Teamster pension funds for which I performed actuarial services and other pension funds with similar characteristics. It was assumed that at age 60, a member with 20 years of service would receive a monthly benefit of \$100. It was further assumed that the fund assets are equal to the liabilities for pensions being paid. This is about the mini-

mum fund level expected for a plan that has been in existence for some time. Unfunded liabilities were assumed to be amortized over 40 years, the maximum period permissible under ERISA.

I was then asked by IBT counsel to calculate the effect on other members of the fund if a man were entitled to a full retirement benefit (\$100 per month) after 10 years of service.

- (a) Pensioners. A man receiving full retirement benefits would continue to receive such benefits. However, the future security of that pensioner might be affected if this liberalization causes more active members to go on the pension rolls. A large influx of new retirees could easily wipe out this margin and additional margins resulting from expected additions to the fund. If the plans were discontinued under these circumstances, some pensioners could lose at least some of their benefits because pensions which were not being paid for at least five years would not be fully insured by the Pension Benefit Guaranty Corporation, an agency set up by ERISA.
- (b) Members. A man with 19 years 11 months of credited service would normally be eligible for a full retirement benefit of \$100 per month after one additional month of credited service if he retires at age 60. However, if a member were entitled to a benefit at any time after 10 years of service, his monthly benefit would be reduced from \$100 to \$27 assuming the plan was constructed on the basis set forth in paragraph 4 above using sound actuarial principles. A decrease in the period of time that contributions are made must correspond to a correlative decrease in benefits at the time of eligibility. All other members of the fund would suffer a similar benefit reduction upon reaching eligibility.
- 10. If the hypothetical pension plan were to provide the same level of benefits to members (\$100) after 10 years

## Affidavit of Joseph E. Dean

of credited service rather than after age 60 and 20 years, and if levels of contribution were not increased accordingly, it is my considered judgment that all funds would be dissipated within a matter of 4 years.

- 11. If the hypothetical pension plan were to provide the same level of benefits to members after 10 years of credited service rather than after age 60 and 20 years, and if the fund were constructed on the basis set forth in paragraph 4 above using sound actuarial principles, it would be necessary to increase levels of employer contributions almost four-fold to provide a benefit of \$100 per month.
- 12. At age 60, based upon modern mortality tables, the average life expectancy of a male is approximately 20 years. Therefore, a 57 year old male member of the Local 705 Fund eligibile for a pension of \$425 per month can expect to receive a total of over \$100,000 in pension benefits during that 20 year period.

/s/ Joseph E. Dean Joseph E. Dean

Subscribed and sworn before me this 8th day of April, 1976.

/s/ RICHARD L. JOHNSON
Notary Public
My Commission Expires Sept. 30, 1978

### Motion of Local 705, etc. to Vacate or Amend Order of March 1st

IN THE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Title Omitted]

FILED

Apr 13 1976

II. Stuart Cunningham, Clerk United States District Court

Motion of Defendants Local 705 and Louis F. Peick to Vacate the March 1, 1976 Order and Dismiss Counts I & II of the Complaint, or to Amend the Order to Certify Pursuant to 28 USC §1292(b)

Come Now defendants Local 705 International Brother-hood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Louis F. Peick (herein "the local defendants"), by Sherman Carmell, one of their attorneys, who state:

1. On March 1, 1976 the court entered a memorandum opinion and order, inter alia, denying the local defendants' motion to dismiss Counts I and II of the complaint (herein "the securities laws counts") for lack of jurisdiction. The order was based on erroneous findings of fact and conclusions of law, as are more fully set out in the local defendants' brief filed contemporaneously with this motion, and the order should be vacated and those securities laws counts dismissed.

### Motion of Local 705, etc. to Vacate or Amend Order of March 1st

2. Alternatively, the is all defendants request that the court amend its order to certify pursuant to 28 USC §1292 (b), the denial of the motion to dismiss as to Counts I and II. The court has recognized that its decision is the first to hold that the antifrand provisions of the Securities Acts apply to an employer funded fixed benefit pension fund and is contrary to the position of the SEC. The result of the decision is, inter alia, to raise a question of law which furnishes a substantial ground for difference of opinion. That question of law is controlling in determining the nature and standard of proof required to sustain the complaint, relevant to the propriety or nature of the plaintiff and defendant classes, and the extent to which the Securities Acts supersede, conflict, or are consonant with ERISA's statutory scheme.

Smith v. Peick, eited by and pending before this court, involves a class action under 29 USC §186 wherein the plaintiff claims to be the representative of all employees disqualified by the local defendants because of pre-fund and post-fund breaks in service. If the securities laws counts are dismissed, a serious issue as to plaintiff Daniel's class standing is raised in view of Smith v. Peick.

By reason of the above, and because the securities laws counts create a protracted case rather than a case under 29 USC §186 which involves entirely different considerations, an immediate appeal from the order may materially advance the ultimate determination of this litigation. This jurisdictional issue raised by the court's decision is of national importance as witnessed by the spate of media and trade commentary, facts which the court may judicially notice, Rules of Evidence, Rule 201(b),(c).

WHEREFORE, the local defendants request that the court:

A. Reconsider and vacate its March 1, 1976 order, as it relates to Counts I and II of the complaint, and to dismiss those counts; or

B. Amend its March 1, 1976 order to the extent of certifying the questions of law raised under Counts I and II pursuant to 28 USC §1292(b).

/s/ Sherman Carmell, one of the attorneys for the local defendants.

Dated: April 13, 1976

CARMELL & CHARONE, Ltd. 39 South LaSalle Street Chicago, Ill. 60603 (312) 236-8033

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### Motion of I.B.T. to Reconsider and Vacate, or Amend Order of March 1st

IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

[Title Omitted]

FILED Apr 13 1976

H. Stuart Cunningham, Clerk United States District Court

Motion of International Brotherhood of Teamsters I. To Reconsider the Court's Order of March 1, 1976, Re Counts I and II, to Vacate That Order and Enter An Order Dismissing Said Counts;

II. Or, Alternatively, to Amend Said Order to Provide for Certification Pursuant to 28 U.S.C. §1292(b)

Now comes the defendant International Brotherhood of Teamsters, and for the reasons to be set forth in a supporting Memorandum to be filed within five days hereof under the Local Rule, moves the Court:

I. To reconsider the Court's Order of March 1, 1976, and to vacate that order, as to Counts I and II, and

Motion of I.B.T. to Reconsider and Vacate, or Amend Order of March 1st

to enter an order dismissing the said Counts of the Complaint as Amended;

II. Or, alternatively, to amend the said order of March 1, 1976, so as to certify therein pursuant to 28 U.S.C. §1292(b) that such order involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation; and thereupon, that these proceedings be stayed pending application for such appeal and pending such appeal if permitted.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, Defendant

By /s/ JACK B. SCHMETTERER

One of Its Attorneys

Jack B. Schmetterer Bernard Weisberg Gottlieb and Schwartz 120 South La Salle Street Chicago, Illinois 60603 726-2122

Sidney Dickstein Thomas W. Mack Dickstein, Shapiro & Morin 2101 L Street, N. W. Washington, D. C. 20037

Attorneys for International Brotherhood of Teamsters

## Transcript of Proceedings on April 13, 1976

IN THE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[TITLE OMITTED]

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Hon. ALFRED Y. KIRKLAND, one of the Judges of said Court, in his court-room in the United States Courthouse, Chicago, Illinois, on Tuesday, April 13, 1976, at the hour of 10:00 o'clock, a.m.

#### APPEARANCES:

LAWRENCE WALNER & ASSOCIATES
22 North LaSalle Street
Chicago, Illinois 60601
By: Mr. LAWRENCE WALNER,

and

Mr. Peter J. Baback 208 S. LaSalle Street Suite 1130 Chicago, Illinois,

appearing on behalf of the Plaintiff;

Messrs. Gottlieb & Schwartz
120 South LaSalle Street
Chicago, Illinois
By: Mr. Jack B. Schmetterer,

and

Transcript of Proceedings on April 13, 1976

Mr. SHERMAN CARMELL 39 South LaSalle Street Chicago, Illinois,

appearing on behalf of the Defendants.

The Clerk: 74 C 2865, John Daniel v. International Brotherhood of Teamsters, defendants' motion to extend briefing schedule and dismiss Counts I and II of the complaint.

The Court: Let me say briefly, gentlemen, it might save time were I to briefly tell you my inclination and if there is strong disagreement, I will certainly hear from everyone on the question of whether the Court reviews and reconsiders or gives its permission for the case to go up on appeal. We have had time to study and consider your motion and some of the authorities cited. In the opinion of my law clerks and myself, it would not change our position. We spent more time preparing this opinion than any opinion since I have been on the bench. It is going to continue on to the Circuit Court of Appeals and the Supreme Court, regardless of what any of us do. So my inclination would be to permit you to take an appeal at this time rather than entertain a motion to review or reconsider. I do not want to be arbitrary, but as I say I am sure we logged between 50 and 100 hours in researching and in writing the opinion. In our opinion, rightly or wrongly, there is nothing in the motion recently filed that would change our thinking. I am not suggesting that we are right. I am just suggesting that we have exhausted our ability in the preparation of this opinion.

Mr. Schmetterer: Jack Schmetterer on behalf of the Teamsters International.

The clerk has read Mr. Carmell's motion, which is a parallel of our motion for the Court, your Honor, to reconsider or for certification. My brief is ready to be filed

## Transcript of Proceedings on April 13, 1976

this morning. I hope you will take the opportunity to read our brief. I know we cite some Supreme Court cases which were not considered in your Honor's opinion, some of which were entered by the Supreme Court after our briefs were filed originally; and we feel the Court would want the opportunity to reconsider those Supreme Court decisions. There are several of them that were not considered in the original opinion. We know that you took a lot of time on the case and that your Honor knows how important this particular case is; and while it is very unusual to ask the Court to reconsider—I do not recall having done it before—I do ask your Honor to read our brief and reconsider. Then if you decline to vacate your order, then to certify.

The Court: Go ahead, Mr. Carmell.

Mr. Carmell: Sherman Carmell for the Local defendants. Your Honor, I would only like to say this. I think that your Honor has acted in a most expeditious manner—and I appreciate that on behalf of the Local defendants—but rather than taking a great deal of time and prolonging the decision on this, we would request then that your Honor do amend his order as of March 1 to certify under 28 USC 1292(b).

That, of course, then gives us ten days in which to file a petition with the Circuit Court of Appeals. That is the position of the Local defendants at this time.

The Court: You represent the Local-

Mr. Carmell: Yes, your Honor.

The Court: And you represent the International?

Mr. Schmetterer: Yes, the International.

I respectfully request your Honor read the brief we are prepared to file and reconsider in the light of recent Supreme Court cases, which were not considered in the opinion.

Mr. Walner: Lawrence Walner for the Plaintiff and Peter Barack.

We are concerned, your Honor, if the matter is certified and goes up, that the discovery not be deferred during that interim; and we feel with proper discovery, we have a reasonable chance on a motion for summary judgment in this matter, based upon the nondisclosures and other matters pertaining to the details of the plans, how they were devised and the communication or lack of communication with the members. So we are concerned with that: that discovery go forward during the pendence of any appeal.

It seems to me your Honor has pretty well made up his mind and certainly we are concerned with that.

The Court: Let me interrupt briefly.

If I took this under advisement and let that go forward, ultimately it would end up for review in the Circuit Court of Appeals and the Supreme Court.

Mr. Walner: I understand that, your Honor. The real novelty of this case, of course, is the security counts. I do not think there is any question but whether, with or without the security counts, that we have substantial other causes of action. So we are anxious to press forward with the discovery to the end that if our theory is upheld, we would be ready to have a motion for consideration of summary judgment either just before or just after the decision could be expected on appeal and that we do not want to have the proceedings at this level come to a grinding halt pending those decisions, because we would be delayed another year or a year-and-a-half, at least, regardless of the disposition on appeal. Even if the security counts should be challenged or reversed on appeal, I feel that the other counts would be viable.

Mr. Carmell: We are not asking for delays. In connection with the class certification briefs, all the Local defendants asked for was an extension to April 22 to file our briefs and affidavits on that.

The Court: Briefs and affidavits for review and reconsideration?

## Transcript of Proceedings on April 13, 1976

Mr. Carmell: No, briefs and affidavits on the class certification question. I would assume that the posture of the case would be that your Honor would deny the motion for reconsideration, would amend its order to certify the securities law counts; and in the meantime, we would go ahead with the next order of business which is, namely, the class certification issue. Those have to be briefed. The defendants' briefs and affidavits are due April 12. We came in today to ask until April 22. It would also allow us time to appeal the Blood Test case which was just filed in the Seventh Circuit. Our briefs would then be due the 22nd. I believe the Plaintiffs would have 30 days in which to respond and then there are, I think, fifteen or twenty days—

The Court: On the class action.

Mr. Carmell: And that discovery would continue so there would be no delay as far as proceeding along with the case. Depending upon the decision, depending upon first whether the Circuit Court of Appeals will take the 1292—assuming they do—when that decision comes down, that would basically frame the case. We will have the security law in or we will just have the 302-type of case and the related, pendant, common law fraud aspects.

The Court: It seems what counsel is saying would accommodate what you are contending for.

Mr. Walner: Yes, if we have the agreement and understanding that there is no delay with the balance of the proceeding.

The Court: I think that is what he is suggesting.

Mr. Walner: Yes, but I do not hear from Mr. Schmetterer.

Mr. Schmetterer: First, we are filing today—and I have served counsel with the first two affidavits in connection with the class question—we are asking only for a delay to the 22nd in filing the class briefs. We are not at present thinking of delay in connection with the class certification, but are proceeding on it.

I do urge the Court to accept and read the brief we are prepared to file this morning. We have spent a great deal of time on it, your Honor. In the original opinion, we cited Supreme Court cases. Your Honor did not—

The Court: Cases that have come down since?

Mr. Schmetterer: Since we filed our original briefs.

The Court: How about since the day we decided it, because we took our research substantially beyond the briefs.

Mr. Schmetterer: I do not believe we talked about Blue Chip decision and I do not believe we talked about Foreman.

Mr. Carmell: And Ernst & Ernst.

The Court: Let me say this: I reviewed thirty or forty cases and the fact that they were not cited, does not mean I have not considered them.

Mr. Schmetterer: Your Honor may have considered them. We did not know if you had considered them or not. We set them forth in our brief. We attempted to set forth that entire series. In view of the importance of this matter, I should think before it went upstairs that your Honor would want to read the brief and then if you say, "You are wrong," you can simply decline to vacate the order; but I would hope you would not make that decision.

The Court: I think what you are saying is that since the day we filed our opinion, you are not relying on the Supreme Court cases that have come down since that time. You are merely relying upon them for the context with respect to the emphasis that should be given to this case from other possible cases.

Mr. Schmetterer: One case that has come down since is Ernst & Ernst.

The Court: You feel that would be controlling?

Mr. Schmetterer: The Foreman and Blue Chip cases were not commented on by your Honor and were not com-

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mented on in the briefs filed, because they were filed considerably before your Honor was assigned this case. Therefore, we had no opportunity to argue them before the Court.

Mr. Walner: Your Honor, the Blue Chip case decision was issued some nine months before this decision and counsel has had ample time to bring the case to the attention of the Court. If he had felt it had any relevance to it, I am sure he would have done so.

The Ernst & Ernst case is a recent decision. I am sure your Honor at least has read about the decision and it had nothing to do with the issues before the Court. It really had to do with whether the 10(b)(5) broadly ascribed scienter to simple negligence. In our case it would be a matter of proof in the case if the application of the pension fund is a question of scienter. It has nothing to do with Ernst & Ernst. That case has absolutely no application to this.

Now if everyone briefs this and the case should go up—and we are of a mind to go along with that provided there is no stalling on the balance of all of the procedures—I would have suggested a different vehicle rather than a full-scale reconsideration such as is proposed. We feel it is a device more than anything to satisfy the 10-day requirement. We think, being just a device, it would be jurisdictionally defective as well, but I have not heard from Mr. Schmetterer on the agreement that the matter can go forward fully on discovery and, if we are ready for it before the Appellate decision, on the question of summary judgment. If we can have that agreement of counsel, my suggestion would be not to reconsider the opinion as they are suggesting, because they have submitted nothing in their briefs that has to do with this case at all.

The Court: I am going to cut this short, as important as it is, because we have got people that require only a

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few seconds of Court's time and this is developing into a full-blown bearing.

Without any disrespect, Mr. Schmetterer, I am going to let the appeal go forward at this time. If I read you gentlemen correctly as to the other matters unrelated to this appeal, you are willing to have the litigation continue on the trial level at this time. That is my understanding.

Mr. Walner: Including all discovery.

Mr. Schmetterer: There is only point I would like to present. First of all, of course, we cannot agree that summary judgment could go ahead with the two counts up in the Court of Appeals. That is only—

The Court: There is nothing filed as of this time regarding summary judgment.

Mr. Schmetterer: No, there is not.

Secondly, I would like leave to present you with an order that amends the order of March 1 to put this in the posture which I believe is necessary for a 1292(b) petition. We have a specific date, I recognize, but unless the order is amended we do not know when the ten days will begin to run.

The Court: I am not sure I have the mechanics all correct and proper.

Mr. Schmetterer: I would like the opportunity to present counsel with a draft order which I think he can approve as to form and which I could then present to your Honor to amend the order of March 1.

The Court: How many days would it take for you four counsel here to get together and see if you can agree?

Mr. Schmetterer: I would try to get it to them this afternoon.

The Court: Shall we say at a status call later this week? Suppose we have a status call on Thursday or Friday, whichever is your pleasure.

Mr. Schmetterer: I would appreciate Friday, if we could.

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The Court: We will have a status call on Friday. In the interim, I am going to deny the motion to review.

Mr. Schmetterer: You cannot be persuaded? You have not had the benefit of our briefs or arguments.

The Court: I have decided. I am not at all persuaded that the cases that might have been overlooked, that might have been filed since then, would change my opinion. We can only do our best and I think to do otherwise would just prolong it. The decision has been made, with all due respect.

Now on the basis that the decision is made, could you four get together and hopefully give me an order Friday that would take care of all of the details?

Mr. Schmetterer: I believe so, your Honor.

I take it that leave to file the brief is denied? As far as my motion, I take it you are denying that motion?

The Court: For leave to file a brief in support, first I have denied that motion to review. That motion is denied.

Now inasmuch as that motion is denied, what is the purpose of filing a brief in support of it.

Mr. Schmetterer: May I have an extension on the class brief to the 22nd?

The Court: Is there any objection?

Mr. Walner: We are very unhappy with the extension. We have had plenty of time. However, we realize this is a major issue.

The Court: That motion to extend to the 22nd is granted. Now you want how much time for your reply brief?

Mr. Walner: Thirty days, your Honor.

The Court: Beyond that time?

Mr. Walner: Yes. If it is ready sooner, we will come in sooner.

The Court: Very well. We will take whatever business is before us on Friday when you return.

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#### Certificate

IN THE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

(Title Omitted)

I, Roscoe C. Giles, Jr., do hereby certify that the foregoing is a true, accurate and complete transcript of the proceedings had in the above-entitled cause before the Hon. Alfred Y. Kirkland, one of the Judges of said Court, in his courtroom at Chicago, Illinois, on April 13, 1976.

/s/ Roscoe C. Giles, Jr.
Official Court Reporter
United States District Court
Northern District of Illinois

Minute Order of April 13, 1976

(See Opposite)

Cause No. 74 C 2865 Date APRIL 13, 1976 JOHN DANIEL, et. al. vs. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, etc. et. al. Brief Statement TO SET APRIL 22 FOR FILING OF DEFENDANTS' BRIEFS AND PAPERS of Motion RESPECTING CLASS AND THE SECOND AMENDED COMPLAINT The rules of this court require counse! to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended). SHERMAN CARMELL Names and Addresses of 39 S. LaSalle Street, Chicago, IL, 60603 moving counsel Defendants Local 705 and Louis F. Peick Representing SIDNEY DICKSTEIN, 1735 New York Ave., N.W., Washington, D.C. 20 Names and Addresses of JACK B. SCHMETTERER, 120 S. LaSalle, Chicago, IL 60603 other counsel entitled to Representing Defendant International Union notice and name of parties they LAWRENCE WALNER, 221 N. LaSalle, Chicago, IL represent. PETER J. BARACK, 208 S. LaSalle, Chicago, II. 60604 Representing Plaintiff 610 1 Reserve space below for notations by minute clerk

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS

motion of defendants! John a seriew and seconsideration of Court's polar entered on our obout
march 1, 1976 are desiral. Defendant 9 0 I denied
beaut to file its motion as series and send serousless
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so these certification. Reply frief due 30 days thesefter.
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Hand this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.

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Minute Order of April 19, 1976

(See Opposite)

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MINUTE ORDER OF APRIL 19, 1976

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

Name of Presiding Judge, Honorable ALFRED Y. KIRKLAND

Cause No. 746 Title of Cause	John Waniel
Title of Cause	was International Buttl of Jeannature
Brief Statement of Motion	
	The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).
Names and Addresses of moving counsel	
Representing	
Names and Addresses of other counsel entitled to notice and names of parties they represent.	
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Newby	Motions of Mouch 1,1976 are denied. The alternative writing of defendants for amendment of Courte rates of Mouch 1,1976 are alternative Motion of defendant.  9 B.J. that proceedings been to stayed pending interbruting appeal is denied.  Duett
	ndum to the Clerk. ise to address the Court until motion has been called.

## Order Entered April 19, 1976

IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

[Title Omitted]

#### ORDER

This cause coming on to be heard on the motions of all defendants for reconsideration of this Court's order of March 1, 1976, and to vacate same and thereupon to dismiss Counts I and II of the Amended Complaint, and for leave to file memoranda in support thereof; and alternatively to amend this Court's order of March 1, 1976, so as to add thereto a certificate permitting application for immediate appeal under 28 U.S.C. 1292(b), and the Court having heard the argument of counsel

#### IT IS HEREBY ORDERED

- A. The motions of defendants for reconsideration of this Court's order of March 1, 1976, and to vacate same and thereupon to dismiss Counts I and II of the Amended Complaint be and the same each are hereby denied, and the motions of defendants for leave to file memoranda in support of their said motions be and the same are hereby denied.
- B. The alternative motions of defendants for amendment of this Court's order of March 1, 1976, so as to add thereto a certificate permitting application for immediate appeal under 28 U.S.C. 1292(b) be and the same are hereby allowed. Accordingly, the Memorandum Opinion and Order of this Court entered herein on

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#### Order Entered April 19, 1976

March 1, 1976, be and the same are hereby amended by addition of the following finding which is hereby made by this Court:

This Court is of the opinion that its Memorandum Opinion and Order of March 1, 1976, to the extent the same denied motions to dismiss Counts I and II of the Complaint as Amended, involved controlling questions of law as to which there is substantial ground for difference of opinion, and that an immediate appeal from the said order denying dismissal of said Counts may materially advance the ultimate termination of this litigation.

C. The motion of defendant International Brotherhood of Teamsters that the proceedings herein be stayed pending interlocutory appeal under 28 U.S.C. 1292 (b), if the same be permitted by the Court of Appeals, be and the same is hereby denied.

#### Enter:

ALFRED Y. KIRKLAND United States District Judge

Dated in said District and Division this 19th day of April, 1976. IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

[Title Omitted]

Come now defendants Eugene W. McCarron, Frank Bridge, Ralph Niedert, Sr., M. J. Siewert, Jr., Frank Kratky, and Peter W. Janopolous, as trustees of the Local 705 International Brotherhood of Teamsters Pension Fund, and Frank Kratky, as president of Local 705, International Brotherhood of Teamsters, by Sherman Carmell, one of their attorneys, and pursuant to Rule 12(b) state:

- 1. With respect to the allegations contained in Counts I-III, inclusive, of the complaint:
- (a) This court does not have subject matter jurisdiction, and the complaint does not state a claim upon which relief can be granted, under either §17(a) of the Securities Act of 1933, 15 USC §77q, or §10(b) of the Securities Exchange Act of 1934, 15 USC §78j(b), as more fully appears from the motions of the defendants to dismiss the original complaint, the pleadings, deposition and affidavits on file, which are incorporated by reference.
- (b) The action is barred by the limitations provision of the Securities Act of 1933 and the Illinois Statute of Limitations.
- (c) International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the "International Union"), Local 705, and other local unions affiliated with the International Union, or any pension fund other than

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#### Motion of Additional Defendants to Dismiss

the Local 705 Pension Fund, are not proper parties defendant; and the defendants are not representative of any other person or defendant within the meaning of Rule 23.2.

- (d) The plaintiff has not established the prerequisites for a class or representative action under Rules 23 and 23.2 FRCP.
- 2. In addition to the reasons stated in paragraph 1 of this motion, with respect to the allegations contained in Count III of the complaint concerning the breach of the duty of fair representation, the court lacks subject matter jurisdiction and the complaint does not state a claim upon which relief can be granted because:
- (a) The plaintiff is a member only of Local 705; therefore, the claimed duty can run only from Local 705 to the plaintiff.
- (b) The eligibility rule and alleged misrepresentations which the plaintiff challenges did not arise out of the relationship between a union and its member under §9(a) of the National Labor Relations Act, 29 USC §159(a).
- (c) The plaintiff has failed to allege that he has exhausted his intra-union remedies.
- (d) This court does not have subject matter jurisdiction under §301(a) of the National Labor Relations Act, 29 USC §185(a).
- 3. In addition to the reasons stated in paragraph 1 of this motion, with respect to the allegations in Count V of the complaint concerning violation of the "sole and exclusive benefit" of employees provision of \$302(c)(5) of the National Labor Relations Act, 29 USC \$186(c)(5).
- (a) The plaintiff's action is barred by the Illinois Statute of Limitations.

### Motion of Additional Defendants to Dismiss

- (b) The plaintiff is estopped from benefiting from a challenge to the service rule or the alleged representations where he made no attempt for 13 years to request that the Local 705 Trustees waive or cure the break in service and contributions or to challenge the representations.
- (c) The Internal Revenue Service has exclusive subject matter jurisdiction over the matters alleged in the complaint; has ruled contrary to the plaintiff's allegations; and the plaintiff has not exhausted his administrative remedies.
- (d) Exclusive remedies are provided in the Employee Retirement Income Security Act of 1974, 29 USC §1001 et seq.
- (e) This court does not have subject matter jurisdiction and the complaint does not state a claim upon which relief can be granted under §302(c)(5). The relief sought exceeds that permitted by §302(e), 29 USC §186(e):

WHEREFORE, these defendants pray that the second amended complaint be dismissed and for their costs.

Sherman Carmell, one of the defendants' attorneys

Dated: April 22, 1976

CARMELL & CHARONE, LTD. 39 South LaSalle Street Chicago, Ill. 60603 (312) 236-8033

### Opposition of Local 705 Defendants to Requested Class Certification

IN THE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Title Omitted]

Come now defendant trustees of the Local 705 International Brotherhood of Teamsters Pension Fund and the president and secretary-treasurer of Local 705 (herein the local defendants), by Sherman Carmell, one of their attorneys, and state:

- 1. The local defendants oppose the plaintiff's motion for requested plaintiff and defendant classes because they do not meet the prerequisites of Rule 23, FRCP, as more fully appears from the affidavit of A. S. Hansen, Inc., attached and incorporated as Exhibit 1, and the accompanying brief.
- 2. The local defendants request that the court conduct an evidentiary bearing if it cannot deny the requested class certifications based on the pleadings and accompanying papers.

Wherefore, the local defendants request that the court enter an order:

Λ. Denying the plaintiff's motion for a plaintiff class or defendant classes; or

### Opposition of Local 705 Defendants to Requested Class Certification

B. To conduct an evidentiary hearing relating to the class issues.

SHERMAN CARMELL Sherman Carmell, one of the local defendants' attorneys

Dated: April 22, 1976

CARMELL & CHARONE, LTD. 39 South LaSalle Street Chicago, Ill. 60603 (312) 236-8033

## Exhibit 1 Affidavit of A. S. Hansen, Inc.

(See Opposite) 🖙

A. S. HANSEN, INC.

EXHIBIT 1

A. S. Hansen, Inc.

#### EXHIBIT 1

#### Richard I. Citron, being first duly swom says:

I am a consultant with A. S. Hansen, inc. and I have participated in and supervised the preparation of this affidavit. I have been assisted in the preparation by: Stephen G. Singer, who is a Fellow of the Society of Actuaries, a Member of the American American Academy of Actuaries, a Fellow of the Canadian Institute of Actuaries, an Enrolled Actuary, and whose responsibility it is to manage the Actuarial Department in Lake Bluff, Illinois for A. S. Hansen, inc. Including the determination of the actuarial methods, procedures, and rates to be used in pension valuations; Carl D. Robst, who is a member of the American Academy of Actuaries and the Conference of Actuaries in Public Proctice, and whose responsibility it is to directly manage members of the Actuarial Department in Lake Bluff, Illinois of A. S. Hansen, inc. including the preparation of the actuarial valuation for the Local 705 Pension Fund; Donald I. Brothers, who was formerly a consultant with and President of A. S. Hansen, inc. and is now the President and Chief Executive Officer of Administration/Systems/ Communications, inc. The facts contained in this affidavit are taken from our books and records kept in the ordinary course of business, those of the Local 705 International Brotherhood of Teamsters Pension Fund publications, and other documents, and are true to the best of my knowledge and belief.

### Information Concerning A. S. Hansen, inc.

A. S. Hansen was founded in 1930 and now serves about 2,000 clients nationally. These clients represent various state public retirement systems, local governmental units, large and small corporations, labor organizations and jointly-managed trust funds. We employ over 400 people who possess a broad spectrum of professional and academic credentials and who serve as resources with respect to all areas of employee benefits. The current status of A. S. Hansen employees with respect to professional actuarial associations is as follows:

Society of Actuaries: 12 Fellows and 15 Associates

EXHIBIT 1

American Academy of Actuaries: 25 Members

Conference of Actuaries in Public Practice: 11 Fellows, 3 Members and

4 Associates

Canadian Institute of Actuaries: 5 Fellows

Fraterial Actuarial Association: 2 Fellows

Further, we have at least 50 individuals who are Enrolled Actuaries and are able to certify actuarial calculations per the requirements of ERISA.

Our firm offers a single source of comprehensive, impartial actuarial counsel on pension and welfare programs and a broad range of technical services, on a professional fee basis. Our total income is obtained directly from the Companies, Funds and Associations for which we work. We are a completely independent firm without any ties to any organization. From our inception, we have neither accepted nor paid commissions of any kind.

We believe that our function as consultants to joint labor-management funds is to coordinate our skills with those of the fund legal counsel, administrator and auditor in support of the Trustees. We will not accept an assignment as a fund administrator. We view our work with joint funds as an important part of our total activity, and are committed to a program of support and service to Trustees throughout the country.

A. S. Hansen offices, nationally and its international affiliates, are located in:

Atlanta, Georgia; Chicago, Illinois; Columbus, Georgia; Dallas, Texas;
Denver, Colorado; Fort Worth, Texas; Houston, Texas; Lake Bluff, Illinois;
Los Angeles, California; Memphis, Tennessec; Milwaukec, Wisconsin;
Montgomery, Alabama; New York, New York; San Francisco, California;
Tampa, Florida; Tulsa, Oklahoma; Wellesley, Massachusetts; Mexico City, Mexico;
Toronto, Canada; Birmingham, England; Brussels, Belgium; Chichester, England;
Dublin, Ireland; Frankfurt, Germany; Glasgow, Scotland; Johannesburg,
South Africa; Leeds, England; Leicester, England; London, England;
Manchaster, England; Melbourne, Australia.

### A. S. Hansen's Relation To The Teamsters Local No. 705 Pension Fund

A. S. Hansen, inc. and an acquired Firm have been performing actuarial services for the Teamsters Local No. 705 Pension Fund for all years since the Fund's inception, including those actuarial studies for the original development of the Plan. As actuaries and consultants, A. S. Hansen has had the opportunity, as professional advisor to the Trustees, to participate in the review of the total operation of the Fund since its inception.

A. S. Hansen, inc. has found that, for as long as we have been providing actuarial services, the Fund has met all the requirements of funding adequacy that were applicable from time to time. Based on our experience, it is our observation that the Fund has had an outstanding record of conservative and effective management of investments and administrative effort.

### Actuarial Assumptions

A distinction should be made between the contribution requirements and the cost of a pension program. Over the long run, the costs of a pension plan are equal to the sum of benefits paid, plus administrative expenses, reduced by investment earnings of the pension fund. The cost is independent of the actuary's judgement, and can only be known in retrospect. How much a plan costs at any moment in time cannot be accurately determined; it can only be estimated. This estimate is used to compute the amount of periodic contributions to the pension fund so that funds may be accumulated systematically, in advance, to provide for the future payment of benefits as well as provide a measure of security to participants.

Contributions to a pension fund are calculated on the basis of estimates of relevant future events, called "actuarial assumptions". The projection of benefits to be paid from this Fund in the future is based on assumptions as to the rates of participant death, disability, withdrawal and incidence of turnover. One further assumption concerning the expected rate of investment earnings on the fund is utilized.

The American Academy of Actuaries in a recent exposure draft concerning actuarial principles and practice has stated that "The actuarial assumptions selected should represent the actuary's best judgement of future events affecting the related actuarial present value. They should take into account the actual experience of the covered group to the extent information is available and applicable, but in recognition of the nature of a pension plan, they should reflect long-term trends rather then give undue weight to recent experience."

If the actuary takes proper account of each of the factors affecting the cost of the plan, then the actual cost will turn out reasonably close to his estimate if the assumptions continue to hold true.

### Actuarial Assumptions Related To Teamsters Local No. 705 Pension Fund

All actuarial valuations performed for the Teamsters Local No. 705 Pension Fund have considered only the actuarial experience and plan provisions of the Teamsters Local No. 705 Pension Trust. Determinations of the adequacy of the contributions to the Teamsters Local No. 705 Pension Trust have been made solely with regard to the contributions generated by the relevant collective bargaining agreements and the liabilities arising out of benefits payable or promised to be payable to and on behalf of such members in plan documents as adopted from time to time which were submitted to the membership. Neither the assets, liabilities or experience of any other teamster fund played any part in our determination.

Where sufficient data has existed, the actuarial assumptions (concerning the incidences of retirement, death, withdrawal, disability and rate of investment return) used to value the liabilities of this plan have been determined by reference to the actual experience which has emerged under this plan. As shown below, we have certified to the Internal Revenue Service per Revenue Ruling 70-257 as to the adequacy of the funding and the reasonableness of the Actuarial assumptions used.

#### EXHIBIT 1

### CERTIFICATION OF QUALIFICATION UNDER REVENUE RULING 70-257

We have made an actuarial valuation of the Local No. 705, International Brotherhood of Teamsters Pension Trust Fund as of January 31, 1975. On the basis of the current Fund assets, contribution rates under the existing labor contracts, and Pension Plan provisions, we hereby certify that our valuation demonstrates that present Fund assets plus expected contributions will not be less than the full cost of the pensions payable to employees expected to retire under the Plan during the term of the existing labor contracts, nor less than the normal cost plus interest accruing on the unfunded past service cost with respect to all employees covered by the Plan.

The actuarial assumptions and methods used in our valuation are in accordance with standard actuarial practices, and provide a reasonable basis for forecasting the costs of the pension benefits provided under the Plan.

A. S. HANSEN, INC.

In addition, we have submitted, from time to time, the actuarial assumptions to the Internal Revenue Service.

### Plantiff's Probability Of Receiving A Benefit

We have been told that it has been alleged that only a small percentage of members who participate in this Fund will ever receive benefits. According to the actuarial assumptions used to determine the adequacy of the Plan's funding, we estimate that

an average member who enters the plan at Mr. Daniel's original entry age of 40 years will have a probability of 50% of realizing a retirement, disability or vested benefit from the plan. This probability increases geometrically for each year that the member is still active. This probability takes into account the plan provisions as they were in effect before compliance with liberalizations required by ERISA.

### Actuarial Funding Method

The method of funding used in the Teamsters Local No. 705 Pension Fund is termed the Entry Age Normal Cost Method. The basis of the funding method is to estimate what the annual level costs would have been had the pension plan been in effect in prior years, and the cost for each member calculated on the basis of when he was first hired, that is his entry age. The annual level cost so estimated is the normal cost of the program. Hence, the entry age normal cost method. Where benefits are based on service, this cost is usually expressed as a level dollar amount per participant.

At the time a pension plan starts, all of the members will have been working for a participating employer varying amounts of time for which no funds have been set aside to meet pension obligations. In fact, during 1955, the first year of the Fund's operation, 47 members retired with benefits. Therefore, it is necessary to make arrangements to put aside money to take care of the plan participants for the service they have performed prior to the commencement date of the plan. This amount is termed initial past service liability of the plan at the time it is established.

The initial past service liability (or Unfunded Past Service Cost) is the amount to which the normal cost would have accumulated if the plan had been in effect since the employment date of the longest service participant in the plan. Prior to February 1, 1976, in order for the plan to remain qualified with the Internal Revenue Service, it was necessary to at least pay interest on the unfunded past service cost in addition to paying the normal cost each year. This total cost is termed the current cost of the plan. ERISA will require the unfunded to be amortized over a 40-year period.

While the ideal goal of a pension plan should be to become fully funded, it must be recognized that, in practice, this goal will probably never be fully achieved. Suppose, for example, the plan calls for liquidating the past service liability in 40 years. It would be unthinkable that within that 40-year period benefits would not be increased and that other provisions of the plan would not become more liberal. This has certainly been the case with respect to the Teamsters Local No. 705 Pension Fund as shown in later sections of this affadavit.

It is important to realize that each improvement will create an additional unfunded liability for all service performed prior to the date of the change. Nevertheless, a plan may be "actuarially sound" even if it is not fully funded. The plan need only recognize all of the costs and make provisions for meeting these costs over a reasonable period of time in order to be an actuarially sound program.

As stated previously, the plan has met all requirements of funding adequacy that were applicable from time to time. Further, we have found that the plan provisions and the negotiated contribution, in effect on January 31, 1975 would result in compliance with the minimum funding requirements of ERISA. Currently, contributions are not sufficient to meet the liberalized benefit provisions required by ERISA and maintain the minimum funding requirements of ERISA. However, it is expected that results of the collective bargaining agreement now being negotiated will result in additional contributions sufficient for the plan to be able to conform to ERISA.

### Accumulated Contributions and Value Of Benefits Received

The plan has, from the beginning, credited members with service prior to the time the plan began in determining amounts of benefits and eligibility. For all members who have retired to date, the value of the amount of the expected benefits at retirement has exceeded the contributions made on their behalf to the Fund. The following table relates the total amounts of contributions received on behalf of a member, accumulated without and with an annual rate of interest at 6%, to the value of their retirement pensions assuming they retired at the earliest possible age:

Year of	Accumulated (	Value of	
Retirement	Without Interest	With Interest	Retirement Benefit
1955	\$ 104	\$ 107	\$ 8,394
1960	730	862	11, 192
1965	2,289	2,930	23, 262
1970	4,893	6,924	34,089
1975	9,510	14,542	57,951

The value of the retirement benefits shown is based on the value of the retirees expected retirement pension and does not include the value of any increases in benefits that had been granted to retirces after they began receiving benefits. That is, if a man retired in 1965, the value calculated is based on the \$100 a month pension he was expecting. However, in 1965 his pension was increased to \$150 a month and in 1969 it was increased again to \$250 a month. The benefit value does not include the affect of these additional increases.

### Fund Statistics As Of January 31, 1975

It should be noted that the benefits are paid to a large number of members and beneficiaries. As of the last actuarial valuation, January 31, 1975, there were 2,587 individuals receiving benefits from the Fund. This number represents 16.4% of the total number, 15,732, of active participants as of January 31, 1975. Benefits at that time were paid at the rate of \$840,000 per month. The total actuarial value of the pensions payable to those receiving benefits on January 31, 1975 was \$89.6 million, compared to the total market value of the assets of the fund on that date of \$91.5 million.

The following table briefly summarizes the distribution of the total 15,732 active participants as of January 31, 1975.

Number of Percentage of Total Group Partic ipants Eligible for Immediate Monthly Benefits of \$525 278 1.8% Eligible for Immediate Monthly 782 5.0 Benefits of \$425 Eligible for Immediate Retirement 1,060 6.8% Eligible for Deferred Vested Pension of \$250 at Age 65 (20 or more years 1,431 9.1 of service, less than age 57) 2,491 15.9% Eligible for Benefits Participants with 10 or More Years of Service But Less than 20 Years of 3,794 24.1 Service 9,447 Remaining Participants 60.0 15,732 100.0%

### Plantiff's Request Concerning Benefit Eligibility

We have been told that the Plantiff has requested that retirement benefits be made available after 10 years of service. Since we were not made aware of other qualifications for benefit eligibility, there are several possible interpretations of the request as related to us.

- Allow retirement after 10 years of service with full monthly benefits commencing immediately upon retirement.
- Allow retirement after 10 years of service but defer the commencement of full monthly benefits until attainment of age 57.

Allow retirement upon attainment of age 57 with at least 10 years of service with full monthly benefits commencing immediately. Participants who terminated with at least 10 years of service but prior to attaining age 57 will be paid a prorata benefit upon attainment of age 57.

### Objective Of A Pension Fund

The best way to view a pension fund is to establish a grasp of its objectives.

Retirement plans are undertaken for numerous reasons such as personnel efficiency objectives and tax incentives. However, the basic objective of the Teamsters

Local No. 705 Pension Fund is to provide for the economic needs of its participants under the major hazards facing them; namely, superannuation, disability and death.

Within this basic objective is the primary purpose of the pension fund — to provide income after a participant has outlived his normal productive period. While there is no precise age at which this occurs, the most common age currently in use in private pension plans is age 65, the age at which unreduced Social Security benefits are first payable.

Many public systems permit retirement with full benefits at uge 60 or after a minimum period of 35 years. Union negotiated pension plans have recently been reducing the uge requirement for full benefits to uge 60 or 62 or after a minimum of 30 years of service.

Lowering the normal retirement age and providing benefits at lower ages without an actuarial reduction involves substantial outlays since the period of payment is lengthened and the period of accumulation is reduced. For example, using actuarial rules of thumb, if a member who enters a program providing a pension of 2% a year at age 35 is permitted to retire at age 55 rather than 60, the cost of his pension rises 15% because of the longer expected period of payment, and an additional 39% due to the shortening of the accumulation period from 30 to 25 years. The resulting compounded 60% cost increase is only offset by the fact he will receive a 50% pension

rather than a 60% - yielding a net increase in costs of 33%. If the same level

of benefits, 60%, were still to be granted than the costs would indeed increase

### Estimated Costs Of The Second and Third Interpretations

Although these interpretations would allow full and unreduced benefit payments to commence at age 57, the contention granting full benefits after 10 years of service is in violation of basic pension design. Once again, we state that the primary purpose of a retirement plan is to replace a portion of an employee's pay when he is no longer able to work. The most important provision of the plan, therefore, is the pension formula (or benefit). The benefit should be designed to provide an income to a career employee, including Social Security benefits, which would ensure that the benefit he receives are adequate in terms of the cost of living at the time he retires.

Although the definition of a career employee varies from industry to industry, upon reaching normal retirement age it is fairly common to see full benefits paid to employees with 30 or more years of service and prorata benefits for employees with less than 30 years of service.

The Local No. 705 Pension Fund will provide full benefits to those employees attaining retirement age who have at least 20 years of service. To provide full benefits, per the January 31, 1975 plan provisions, at age 57 and 60 to those employees with 10 years of service as assumed in the third interpretation would once again represent a substantial cost deviation from sound pension policy.

In the case of the second interpretation, there is no prorata benefit for those participants who terminated with at least 10 years of service but prior to age 57. These participants would have earned a full pension after 10 years, deferred to attainment of age 57 and, therefore, would have no incentive in the retirement area to continue working for a participating employer. Therefore, we could expect more "retirements" after 10 years of service since members could find employment elsewhere and obtain additional pension benefits.

We have calculated the estimated weekly contribution rate of these interpretations to be \$51 for the second interpretation and \$34 for the third interpretation as compared to the present \$24 per week contribution requirements representing increases of 113%

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### Estimated Costs Of Providing The First Interpretation

by approximately 60%.

We have estimated the contribution requirements if the Teamsters Local No. 705
Pension Fund was to allow retirement after 10 years of service with benefit payments commencing immediately upon retirement. If the January 31, 1975 level of benefits in the Teamsters Local No. 705 Pension Fund was the amount payable upon retirement after 10 years, the weekly contribution rate would be \$106 rather than the existing weekly contribution rate of \$24 representing an increase of 342%.

If the contribution rate is not increased to \$106, then the benefits payable to the present active members under this provision would be \$96 per month rather than \$425 at age 57 or \$525 at age 60. This would result in a substantial deviation from the present benefits and contributions. In fact, approximately 7% of the January 31, 1975 active membership (those eligible for immediate retirement) would incur immediate expected benefit losses ranging from \$429 per month to \$329 per month.

These cost estimates were estimated using the assumption that all individuals would retire immediately upon attaining 10 years of service. This was done since these individuals would have earned the maximum pension, payable immediately, and could find employment outside the industry. This would be necessary since the retirement income from the Local No. 705 Pension Fund would not provide an adequate "retirement" income. In such cases they would still remain active employees in another industry, probably earning credit for another pension, and would be collecting "retirement" benefits from Local No. 705 Pension Fund. Based on this assumption, if the benefits were not reduced, the January 31, 1975 assets of the Fund would be exhausted in less than four years.

and 71%. If these weekly contribution rates were not forthcoming, the benefits to those active members of the Local No. 705 Pension Fund would be reduced to \$200 per month and \$302 per month, respectively, for the second and third Interpretations.

EXHIBIT 1

Therefore, a portion of the present active participants would suffer an immediate reduction in benefits ranging from \$325 per month to \$123 per month under these Interpretations.

### Further Comments Concerning Plantiff's Request

Unless the additional contributions were forthcoming to support any one of the three interpretations of the Plantiff's request, the result would be substantial reductions in the amount of benefits to be received by participants, especially those eligible for immediate retirement. In such cases, the Internal Revenue Service would view \* the new provisions as, at least, a "curtailment". That is, any amendment which reduces benefits results in a curtailment and the Fund then must provide the Internal Revenue Service with the same information concerning the plan as would be required under a plan termination. It would also be possible for the Internal Revenue Service to view the results of the amendments as a termination of the plan in practice.

All of the weekly contribution rates necessary to support the various interpretations of the Plantiff are based on the minimum funding requirements of EKISA.

### Requirements of ERISA

One other interpretation is possible from the Plantiff's claim and it is the one required by ERISA. Under one alternative of ERISA, pension plans must provide a benefit to those individuals who have at least 10 years of service. However, neither the full monthly benefits needs to be provided nor do the benefit payments need to commence, on an unreduced basis, earlier than the normal retirement age.

ERISA allows the full normal retirement benefit to be earned in accrued pieces, such as at a rate of 3% per year. Therefore, under ERISA, a participant who withdraws from the fund after 10 years is eligible for 30% of the normal retirement benefit, or \$165 a month (the normal retirement benefit is \$550 per month at oge 65).

Further, the \$165 per month benefit is first payable upon attainment of age 65. If payments are to begin at an earlier age, the ERISA allows a reduction in the amount to reflect the actuarial equivalency.

The Local No. 705 Pension Fund is in the process of conforming the plan's provisions to the requirements of ERISA. The additional weekly contribution requirement necessary to maintain the revised plan on a proper funding basis is estimated to be \$4.00 per week. This amount is substantially below those estimated for the interpretations of the Plantiff's claim. Furthennore, as contrasted to the Plantiff's claims, the design of the ERISA provisions is based on sound pension policies.

### Financial Position As Of January 31, 1975

The Local 705, International Brotherhood of Teamsters Pension Fund had assets as of Junuary 31, 1975 of approximately \$97.3 million at book value. The assets are and always have been conservatively managed. An approximate breakdown of the asset mix as of January 31, 1975 was as follows:

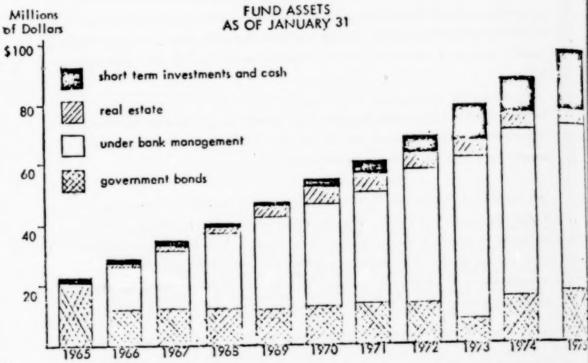
Cash and Certificates of Deposit	\$19.7 million
Government Securities	17.7 million
Discretionary Trust Funds Invested by	
Major Chicago Banks	53.9 million
Real Estate	6.0 million

The following chart illustrates the growth of the Fund and the mix of investments since 1955. Prior to 1965, the Fund was invested exclusively in government securities and short-term investments.

A. S. Hansen, Inc.

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It has been the policy of the Fund, since it began, to invest in either government or short-term securities on a self-administered basis, with a prudent addition of real estate limited to not more than 10% of the portfolio. All other funds have been invested by the trust departments of major Chicago banks. The past practice of Local No. 705 investment policy has, in our opinion, anticipated the prudent man fiduciary responsibilities as defined under the Pension Reform Act (ERISA). The Trustees receive from A. S. Hansen information which gives them a full understanding of payout requirements and mix of obligations between active and retired members.

### Operating Results Fiscal Year End January 31, 1975

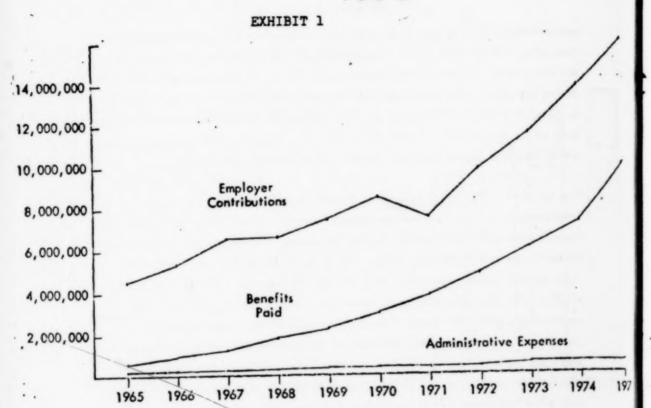
For the fiscal year ended January 31, 1975, contributions received from the employers for the members were approximately \$16.1 million. In addition, the Fund received

approximately \$3.5 million from investment income and from nonies transferred from other smaller funds which were merged into the Local No. 705 Fund during the fiscal year. Actual benefit payments to retirees were approximately \$10 million during the year. Administrative expenses were only \$468,000, or approximately 2.9% of the contributions received. The administrative expense included the fund office administrative costs, data processing support and all professional fees which included support from the auditor, legal counsel and the actuary.

The Local No. 705 Fund, by policy, has always operated with significant involvement of its professional advisors to help the Trustees determine their policies for effective administration and judicial decisions. The heavy use of professional advisors accounts for approximately .8% of the 2,9% of the administrative cost rate, so that the administrative costs for other than professional advisors is only slightly over 2%. Considering the effective, current and highly communicative approaches used by this fund, it probably has one of the lowest administrative cost rates as a per cent of contributions of any multi-employer fund in the U.S. The Fund has been host to a number of other interested funds and professional: who have wanted to review its approach because it is considered to be one of the most effective operations in the pension industry, both with regard to performance and cost.

### Operating Results - From February, 1955 To January 31, 1975

The annual audit report as of January 31, 1975 provides an exhibit consolidating all revenue and expenditures from the inception of the Fund in February of 1955 through January 31, 1975. Approximately \$115 million of contributions have been received from employers participating in the Fund. In addition, \$7.5 million has been transferred from other smaller funds which have been merged into the 705 Fund over the years for more effective performance. Investment income totaling \$19 million has been received over this period of time. Retired members and beneficiaries have received \$42 million dollars in benefits. The cumulative administrative cost as a per cent of contributions received has been 2.01% over the entire period of the Fund's operation. The following chart illustrates the financial operation of the Fund since 1955.



In Hansen's experience as actuaries for a number of multi-employer funds and also based on government statistics published by the Department of Labor, the cumulative administrative costs as a per cent of contributions for the operation of this Fund have been less than half the average for funds of this size. (Smaller funds have an even higher per cent of administrative costs related to contributions.) The cumulative average has been lower than for the year ended January 31, 1976 because of the additional costs required due to ERISA.

### Delinquent Contributions

One of the significant problems which occurs nationally for multi-employer funds is the problem of collection of contributions from all employers on a timely and appropriate basis. The Local No. 705 Fund has minimal problems in this area because of Trustee policies and the administrative approach used. Employer

### 187 a

contributions are due monthly based on amounts agreed upon under the collective bargaining agreements. The fund administrative office notifies any employer from whom contributions have not been received for the preceding month that it is delinquent on the 10th of each month. Each business agent of the union who has the assignment of communicating with delinquent employers is notified of the delinquency by the 20th of the month. Notice is given to each covered member by the 25th of the month if contributions have not been received for that member for the preceding month. Each member is given a monthly statement as to the amount of total contribution delinquency. This procedure is possible because of the computer technology used by the Fund as part of its administrative operation. This communication and control is performed within the low administrative cost parameters indicated above.

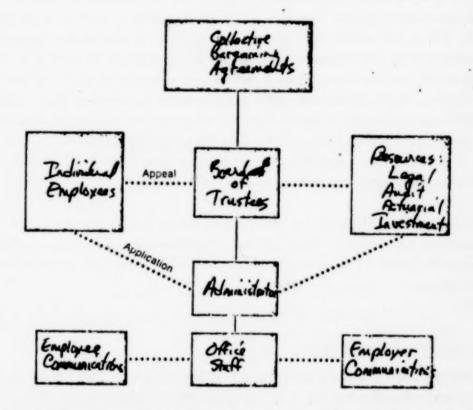
Accordingly, from a financial and administrative perspective, the Local No. 705, International Brotherhood of Teamsters Pension Fund performs at the highest level of responsibility under the supervision of the Trustees and on a very efficient and cost effective basis.

### Communication To The Members

The policy of communication to the members has been to approach member education and understanding as one of the major responsibilities of the Trustees and, through the Trustees, of the administrative office. The fund organization is illustrated by the following chart which appeared in the 1974 Pension Fund Annual Report.

### **FUND ORGANIZATION AND OPERATIONS**

11.



To assure communication to the members in a way that is understandable, the following approach has existed since the Fund began. The Administrator and the Trustees are supported by a competent fund office staff which works directly with all employers and employees to maintain accurate records and to promptly resolve all questions and concerns. The office staff provides a high level of communication, both in writing and by telephone and is available for personal interviews with any member who wishes to have more information or resolve any question. All professional resources — legal counsel, certified public accountant, actuaries and investment agents — report both to the Administrator and the Board of Trustees. It has been the policy of the Trustees to have semi-annual audits and periodic actuarial valuations. Actuarial valuations have been made, generally, annually and at no time less frequently bi-annually.

Over the years, weekly employer contributions have increased through the collective bargaining process. Immediately after a change in contribution rate, actuarial valuations have been made to determine possible alternative benefit improvements. After review of the alternatives by the Trustees, the communication process proceeds as follows:

- 1. Alternative benefit possibilities have been presented to the membership at union meetings. Depending upon the degree of complexity of the alternatives, professional advisors to the Fund have appeared to aid in the communication of the possible alternatives. Presentations have been made verbally, by written summary and through the use of visual approaches to attempt to give the members a clear understanding of the alternatives. Based upon these presentations, the members have then voted as to the selection of benefit alternatives which they prefer. This has been an exciting experience in that a number of times the active members have foregone the level of benefit improvement which would otherwise be possible so that pension benefits can be improved for already retired members to aid them in having increased pension income to offset increased costs of living due to inflation.
- 2. After the union members have indicated their preference, the Trustees decide on the priority of benefit improvement choices considering the members' desires. A communication is then sent to the home of each member, indicating the benefit plan improvements in summary form adopted by the Trustees.
- After preparation of the appropriate legal documents, submission to the IRS and other government agencies and government approval of the proposed changes in the plan (supported by formal actuarial valuations), a pension plan booklet is prepared.

1

This booklet has two sections: One section describes the revised pension plan in language designed to be understood by the average participant. The second section of the booklet includes the formal, IRS approved plan. The booklet clearly states the method by which a member can obtain information, apply for benefits, obtain interpretations of the plan or appeal any administrative decision. An example of this description which appears in the current booklet is as follows:

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### "Administrator, Trustees and Appeals

All questions or claims concerning eligibility or benefits or interpretation of the pension plan should be directed

Louis F. Peick, Administrator Local No. 705, I. B. of T. Pension Fund 300 South Ashland Boulevard Chicago, Illinois 60607

After you have received an answer from the administrator, you have ten (10) days to request that the trustees review that answer. The request must be made in writing to the administrator, if you ask to appear before the trustees you will then receive a notice when and where the trustees will consider your appeal and if you do not request a review within ten (10) days after receipt of the administrator's answer (or within an extension allowed by the administrator within the 10-day period), the decision will be final and binding.

Official Rules and Regulations. This booklet describes the main features of your plan. Your actual benefits will be determined in accordance with the official pension plan which appears on the following pages. Please read the plan carefully and pay particular attention to the eligibility requirements of 2.01 through 2.07 and the appeal procedures in 5.01 through 5.03.

We shall strive to better these plans as the law and economic conditions may allow.

> Fraternally yours, LOUIS F. PEICK, Secretary-Treasurer"

- 4. The monthly statement to the employee concerning whether or not there are any contribution delinquencies occurring on his behalf is an integral part of the total communications program.
- 5. It has been the practice, from the beginning of the Fund, that any member who withdraws from the Fund should be counselled as to the effect of his withdrawal. The member signs a statement upon withdrawal that he understands that his rights to pension benefits terminate at the time of withdrawal or that his rights have vested based on the plan provisions because he has met the eligibility requirements.
- 6. In recent years, prior to the requirements of ERISA, annual financial reports have been submitted to each member at his home and to each participating employer.

In summary, the member communication process involves the member in plan decisions, provides a series of repetitive communications to the member to keep him informed as to his rights and the ways in which he can obtain further information or appeal any decision. The office staff has always been instructed to be available

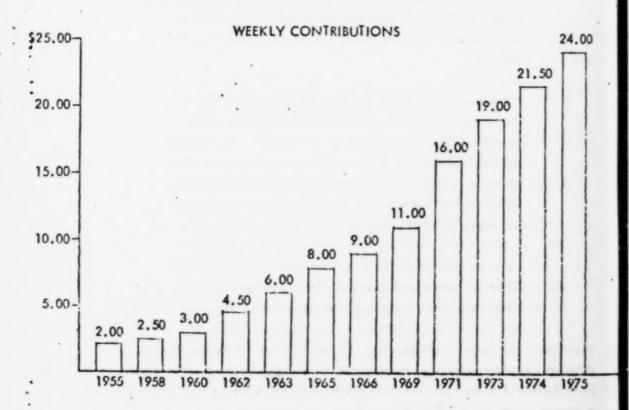
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for any member inquiry. If the member is not satisfied with the staff results, he has an opportunity to meet personally with the administrator and, if dissatisfaction still exists, to appeal directly to the Trustees.

### Contribution and Benefit Changes

1

The Fund began in 1955 on the basis of a \$2.00 per week employer contribution. From the beginning, the amount of benefits available has been determined on the basis of actuarial valuations using census data of the active and retired members of the Fund. The following chart graphically illustrates the increuses in weekly employer contributions for the majority of members determined through collective bargaining. (There are some variations in contributions, particularly for groups which have been merged into the Fund in recent years.)



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A. S. Hansen, Inc.

EXHIBIT 1

Normal pensions increased to \$250 a month for first five years, followed by \$150 a month for life. Previous retirees' pensions increased to \$150 a month.

1966

1965

Retirement age reduced to 57. Disability retirement age reduced to 45. Normal pension payments continued to surviving widows until 120 monthly payments in all are made to the retired employee and his widow.

1969

Normal pensions increased to \$250 a month for life. Previous retirees' pensions also increased to \$250 a month.

1971

Normal pensions increased to \$400 a month for retirement at age 60; \$350 at age 59 and \$300 at age 58; \$250 at age 57 was unchanged. Disability retirement age requirement eliminated. Pensions vested after 20 continuous years of service. Pensions paid for 120 months to eligible survivors of active employees who have qualified for normal retirement.

1973

Normal pensions increased to \$525 a month for retirement at age 60 and \$425 at age 57–59. Disability pensions increased to \$275 a month. Previous retirees' pensions increased by \$25 a month.

The determination of choices of the form of each benefit improvement was made through the communications process described above including membership meetings as to alternatives, Trustee decisions and communication to the members and employers as to changes made.

Subscribed and swom to before me this 13th day of April, 1976.

Notary Public, Dorothy W. Uso

(Tirle)

### Affidavit of Joseph W. Ballew

IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

[Title Omitted]

Joseph W. Ballew, being duly sworn, deposes and says: My name is Joseph W. Ballew. I submit this affidavit in support of the IBT Memorandum in Opposition to Plaintiff's Motion for Plaintiff and Defendant Class Action Certification and Determination in the above-captioned case.

1. I have acted as Administrative Assistant to the General Secretary-Treasurer of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America ("IBT") since January 1975. From 1962 to 1975, I have served as Comptroller to the Western Conference of Teamsters. I have been a trustee of the Western States Teamsters Representatives Retirement Plan since 1969 and have also served a term as Advisory Director to the International Foundation of Employee Benefit Plans, the largest private foundation in the area of employee benefit plans. Based upon my experience, particularly with pension funds in the Western Conference, I have a familiarity with the general workings of many of the pension funds of organizations affiliated with the IBT covering employees under collective bargaining agreements (hereafter "Teamster pension funds"). Additionally, I am familiar with some of the methods by which Teamster members may learn of the substantive provi-

### Affidavit of Joseph W. Ballew

sions of their pension funds, and the role that members may play in shaping the terms of the funds to which they belong.

- 2. The IBT does not control the selection of trustees, administration, or nature of investment of the Teamster pension funds with which I am generally familiar.
- 3. Pursuant to federal law, officers of each local union in the IBT are elected by the members of each respective union. It is those elected local union officers, either themselves or through Joint Councils, who determine the selection of union trustees of the 230 Teamster pension funds. The trustees of each fund, both union and employer, are responsible for the formulation and workings of that particular fund. Each Teamster pension fund is therefore a wholly autonomous unit with no joint control, investments, or administration.
- 4. There are many differences among the 230 Teamster pension funds. While marked differences may be found between any two Teamster pension funds, the variations in the methods of administration, the manner in which investments are made, and the law governing each fund may be illustrated by comparing the Western Conference Fund (covering in excess of 500,000 members) with administrative methods, investment function, and the law governing other Teamster pension funds.

### (a) Administrative and Investment Functions:

Employer contributions to the Western Conference Fund are collected by an administrator and then turned over to the Prudential Insurance Company. These funds are held by Prudential under a contract issued to the Western Conference Fund. Some of these funds are invested by Prudential in group deferred annuity contracts, which guar-

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antee the Fund a given rate of return on its investment. Other assets are put into one or more separate accounts which are managed by Prudential, including one account for real estate and another account for common stock.

The day to day investment function is performed by Prudential. The trustees of the Western Conference Fund may provide general direction to Prudential, such as suggesting how funds are to be allocated among the various accounts, but the Western Conference Fund trustees do not, on a daily basis, exercise control over the way in which the funds are invested.

The Western Conference Fund trustees do not hire their own staff to perform administrative functions for the Fund, such as the investment of assets and processing of claims. Rather, all work performed for the Fund is carried out by independent contractors.

Other Teamster pension funds may not retain an insurance or investment company such as Prudential to carry out the investment and administrative functions for the trustees. In such pension funds the day to day investment decisions are made by the trustees who may be assisted by a permanent salaried staff of administrators and/or investment advisors. Additionally, employees may be hired for the purpose of processing claims and acquainting plan members with the eligibility requirements of the particular plan.

Since each Teamster pension fund is an entirely autonomous unit, the methods of administration and the manner in which funds are invested may reflect a combination of any of the methods set forth above. Some fund trustees exercise day to day control over certain investment decisions while other decisions may be delegated. The fund may employ some salaried staff members but carry out other functions through independent contractors.

### Affidavit of Joseph W. Ballew

### (b) Governing Law:

The Western Conference Fund, pursuant to the terms of the trust agreement, is governed by the law of the State of Washington.

It is common practice for the trust agreement of Teamster pension funds to state that the trust will be governed by the law of a particular state (usually the law of the state where the trust was created).

- 5. Members of each of the 230 separate Teamster pension funds may become acquainted with the eligibility requirements of their plan in a variety of ways. The following is illustrative of some of those informational sources.
- (a) Booklets. It is common practice for the trustees to prepare or have prepared by their agents an informational booklet which may be revised periodically. These booklets vary markedly in format, style and general composition. Additionally, the manner of distribution may differ. For example, the Western Conference Fund provides to local unions a sufficient amount of booklets for distribution to all covered employees. The employer also receives a supply of descriptive booklets. All booklets are updated if changes are made in the trust agreement. Other funds may mail such booklets to individual employees and respond to requests for booklets from members.
- (b) Leaflets and Bulletins. Some local unions post leaflets and bulletins at union headquarters, informing members of the terms of their particular pension plans or changes in the nature and extent of benefits.
- (c) Union Newspapers. Local union newspapers may contain articles which discuss the workings of pension plans or changes in pension benefits.

### Affidavit of Joseph W. Ballew

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- (d) Information Distributed By Local Union Candidates. Pursuant to law, all union officers are elected. The extent and nature of pension benefits is often an issue in such elections.
- (e) Oral Explanations. It is not unusual for a covered member to receive oral explanations concerning the provisions of the pension plan from the trust administrators, local union officers, or local union employees. Although the local union may not properly make representations as the agent of the fund, members often seek the advice of their local unions if questions arise concerning eligibility requirements.
- 6. Teamster pension funds are constructed, controlled and directed by the trustees of the particular funds, consisting of one-half union and one-half employer representatives, as required by federal law. The individual Teamster member does have input regarding the selection of the union trustees. For example, trustees of the Western Conference Fund are selected by members of the Joint Councils. The members of the Joint Councils are elected local union officials. Therefore, if the majority of members are dissatisfied with the eligibility requirements or workings of the fund, they may elect union officials who will select trustees aligned with their position.

/s/ Joseph W. Ballew Joseph W. Ballew

Subscribed and sworn before me this 21st day of April, 1976.

/s/ Ann L. Sprague
Notary Public
Ann L. Sprague, Notary Public
District of Columbia
Residing at 25 Louisiana Ave., N.W.
Washington, D.C. 20001
My Commission Expires June 30, 1980

### Order of U. S. Court of Appeals Granting Permission to Appeal

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT CHICAGO, ILLINOIS 60604

[Title Omitted]

FROM THE

United States District Court
For the Northern District of Illinois
Eastern Division

(74 C 2865)

A True Copy: Teste:

/s/ DONNA ANEZELI, Deputy Clerk of the United States Court of Appeals for the Seventh Circuit.

June 17, 1976

Before:

HON. THOMAS E. FAIRCHILD, Chief Judge HON. LUTHER M. SWYGERT, Circuit Judge HON. WILLIAM J. BAUER, Circuit Judge

This matter comes before the court on the "Petition for Permission to Appeal Under 28 USC § 1292(b)" filed herein on May 3, 1976 by counsel for the defendants-petitioners. The plaintiff-respondent was today granted permission to file instanter his memorandum in response to the aforesaid

### Order of U. S. Court of Appeals Granting Permission to Appeal

petition. Also as of this date, the National Coordinating Committee for Multiemployer Plans was granted permission to file an amicus curiae brief in support of the defendants-petitioners' petition for permission to appeal. Upon thorough consideration of all of the foregoing documents,

It Is Ordered that the defendants-petitioners' petition for permission to appeal from the interlocutory orders of March 1, 1976 and April 19, 1976 is hereby Granted.

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### Affidavit of Cramer M. Gilmore II

IN THE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Title Omitted]

District of Columbia) ss:

#### AFFIDAVIT

CRAMER M. GILMORE II, being duly sworn deposes and says:

My name is Cramer M. Gilmore. I am Research Associate for the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America ("IBT"). My principal place of employment is 25 Louisiana Avenue, N.W., Washington, D.C., headquarters of the IBT. I submit this affidavit in support of the IBT Memorandum in Opposition to Plaintiff's Motion for Plaintiff and Defendant Class action Certification and Determination in the above-captioned case.

- 1. I have served as Research Associate for the IBT since August, 1974. Among my duties as Research Associate, I am the person principally responsible for fringe benefits analysis. I therefore have the responsibility for researching and being aware of changes in matters relating to pension reporting and disclosure. Prior to my employment by the IBT, I served for approximately four years as Assistant Analyst for the Airline Pilots' Association in the retirement and insurance department.
- 2. In December 1974 I was requested by IBT counsel in the above-captioned case, to conduct a survey of all docu-

### Affidavit of Cramer M. Gilmore II

ments located in the IBT Research Department pertaining to pension fund service requirements of IBT-affiliate organizations.

- 3. The IBT does not exercise any central control over pension funds established by Teamster affiliate organizations covering employees under collective bargaining agreements. The administration of the funds, payment of benefits, distribution of information pertaining to the funds, and processing of claims are all carried out at the respective local levels with no participation by the IBT whatsoever. It is therefore difficult for the IBT Research Department to compile information concerning such pension funds, particularly because of the local autonomy of the many pension trusts. However, based upon the documentation available, I conducted the "Survey of Service Requirements for Retirement Benefits of Certain Teamster Pension Plans," attached hereto as Exhibit A.
- 4. The Survey was compiled from booklets pertaining to each of thirty-two Teamster pension plans. These booklets were gathered for the purpose of preparing demands for the negotiation of the 1973 National Master Freight Agreement and represented every document on file at the IBT Research Department at the time the Survey was conducted. According to the Register of Retirement Benefit Plans, reported under the Welfare and Pension Plan Disclosure Act (attached hereto as Exhibit B), there are a total of 229 pension funds of organizations affiliated with the IBT. Additionally, since the Register list was compiled, the Western States Food Processing Industry Employees Pension Trust was created, making a total of 230 pension funds of organizations affiliated with the IBT. Although the booklets used in the Survey pertain to thirty-two plans out of this total of 230 Teamster affiliated plans, they account for over half of the total membership of the IBT covered by such pension plans.

### Affidavit of Cramer M. Gilmore II

- 5. The thirty-two booklets contained information generally available to beneficiaries of the respective plans. Each booklet may not reflect the most current information on the provisions of each plan. However, the effective date of each booklet is noted in the Survey directly below the "Plan Name," and I am aware of no substantial changes that have occurred in any plan subsequent to those dates with respect to the service requirements.
- 6. During the course of the Survey I had the opportunity to review in detail each of the thirty-two booklets. Based upon that review I have noted the following:
  - (a) Each booklet is different in general format and style.
- (b) Some booklets are in narrative form, some booklets in "question and answer form," while others are a combination of both forms.
- (c) Some booklets contain the entire trust agreement, some booklets contain portions of trust agreements, while others contain no verbatim portions of trust agreements.
- (d) Some booklets contain statistical examples while others do not.
- (e) Some booklets contain bold caveats such as "Continuous Service is Important," while others do not.
- (f) Most plans vary widely in the general definitions used.
- (g) The minimum age requirement for full benefits differs substantially among the various plans.
- (h) The number of years of credited service for normal retirement benefits differs substantially among the various plans.
- (i) The formula used to determine years of credited service for full benefits differs substantially among the various plans.

### Affidavit of Cramer M. Gilmore II

- (j) The benefit formula differs substantially among the various plans.
- (k) The break-in-service provisions differ substantially among the various plans.
- (1) The definition of covered employment differs substantially among the various plans.
- (m) The plans differ substantially with regard to treatment of layoffs as a break-in-service.
- (n) The plans differ substantially in their treatment of service in the armed forces, absence due to illness, and service under a non-covered collective bargaining agreement with regard to the overall length of the break-inservice and qualifying contributions subsequent to the break.
- (o) Some plans allow for early retirement while others do not.
- (p) Some plans allow for vesting while others do not. Those that allow for vesting differ substantially in the age provision and formula for such vesting.
- (q) The employer contribution formula differs substantially among the various plans.
- 7. The differences among the plans and booklets, set forth in ¶ 6 above, represent only some of the differences among the various plans and booklets.
- 8. Each of these plans covers employees engaged in the trucking industry. Since the Teamster plans not represented in this Survey cover, to a large degree, members employed in diverse industries, including firemen, brewery workers, bacteriologists, school teachers, blacksmiths, seamstresses and egg candlers, it is fair to infer that the provisions of these other plans will differ more markedly than those examined in the Survey.

### Affidavit of Cramer M. Gilmore II

- 9. I was requested by IBT counsel to determine whether a person with the age and service qualifications of Mr. Daniel would be eligible for a full retirement benefit (as set forth in the "benefit formula" column of Exhibit A) based upon the booklets used in the Survey. Mr. Daniel's qualifications were as follows:
  - (a) 221/2 years of credited service;
  - (b) Age 65; and
  - (c) 4 (or 7) month break-in-service during 11th year due to layoff.
- 10. Based upon the qualifications set forth above, Mr. Daniel would (except for the minimum service requirement of 25 years in 5 plans) be eligible for full retirement benefit under every plan except the Local 705 Plan.

/s/ CRAMER M. GILMORE II Cramer M. Gilmore II

Subscribed and sworn before me this 9th day of April, 1976

/s/ FAITH M. JOHNSON
Notary Public
My Commission Expires Aug. 31, 1978

### Exhibit A

Service Requirements for Retirement Benefits of Certain Teamster Pension Plans

(See Opposite)

6...

# SERVICE REQUIREMENTS FOR RETIREMENT BENEFITS OF CERTAIN TEAMSTER PENSION PLANS



### INDEX OF SELECTED TEAMSTER PENSION PLANS

CENTRAL CONFERENCE	•	EASTERN CONFERENCE

Name of Plan	Effective Date	Page No.	Name of Plan	Effective Date	Page No.
Local 142	6/1/68	1-2	Local 469	9/1,/72	16-17
Local 544	5/1/71	3-4	Local 478	1/73	18
Local 705	1/73	5-7	Local 491	12/14/72	19
Local 710	8/1/70	8-9	Local 557	9/1/71	20-21
Central States,	5/1/71	10	Local 639	7/1/72	22
Southeast and Southwest Areas			Local 660	4/1/71	23
Suburban Teamsters	8/1/70	11	local 701	1/1/72	24
of Northern Illinoi	18		Local 707	9/72	25
	EASTERN CONFERENCE		Local 805	1/1/71	26
Local 37	1/72	12	Local 806	3/63	27
Joint Council 84	4/1/68	13	Local 816	10/1/72	28
Local 282	3/68	14	Central Pennsylvania	9/1/72	29
Local 445	10/1/66	15	Cumberland Maryland Area Teamsters	10/1/70	30

### EASTERN CONFERENCE (CON T.)

Name of Plan	Effective Date	Page No.
Hagerstown Maryland Motor Carriers and Teamsters	9/1/70	31
New England Teamsters and Trucking Industry Pension Plan	11/1/71	32-33
New York Central	6/1/71	34
New York City Trucking Industry	10/1/72	35-36
New York State	9/1/67	37-38
Trucking Employees of North Jersey	3/1/72	39-40
Western Pennsylvania	7/21/71	41
WB	STERN CONFERENCE	
Local 85	1/1/71	42
Western Conference	11/1/72	43
	TOTAL NO. OF PLANS:	CENTRAL CONFERENCE - 6 EASTERN CONFERENCE - 24 WESTERN CONFERENCE - 2 TOTAL: 32

				NORMAI	RETIREM	ENT	EARLY	RETIRM	VES	LINC	1
PLAN NAME	mi	ni mum									EXPLOYER
effect. dt.	age	years of credited	bene	efit formu	ıla	service requirement	yes	no	rqrats	formula	CONTR (BUTT)
Local 142 6/1/68	60	20 yearsat least 80 weeks of contribu- tions.	Contri- bution Rate (week) \$10 \$ 9 \$ 8 \$ 7 \$ 6 \$ 5 \$ 4 \$2.50	Monthly Payment (1st 5 years) \$350 \$325 \$300 \$265 \$180 \$160 \$140 \$110	There- after  \$140 \$125 \$110 \$100 \$ 90 \$ 80 \$ 70 \$ 55	"Crediting of Service" An Employee shall receive Pension Credit for any period during which he worked in Covered Employment according to the following Schedule: Weeks Engaged in Amount of Covered Employment Pension During Calendar Year Credits Less than 25 weeks No Credit 25 but less than 1 year of 35 weeks Credit 35 weeks Credit 1 yr. Cred Past Service Shall be granted to each Employee on the basis of Employer Contributions made on his behalf in accordance with the above schedule. Future Service Shall be granted to each Employee for whom an Employer Contribution has been made for the period of time prior to his Effective Date during which he was in Covered Employment on the basis of the crediting schedule outlined in this Plan. "Covered Employment"					\$2.50 to \$15.00/x
						Prior to the Effective Date Employment within a Collective Bargaini Unit and within the jurisdiction of L. 142. After the Effective Date Employment by an Employer who is bound by the Trust Agreement.  "Breaks in Covered Employment"  The continuity of Covered Employ	ng of				

			NORMAL RETIF	REMENT	EARLY	RETIRM	VES	TNG	1
PLAN NAME	mil	nimum							ENG. UNEU
effect. dt.	age	years of credited service	benefit formula	service requirement	yes	no	rqrmts	formula	COMMRIBUTIO
Local 142 (con't.)	*			ment shall be considered broken and all Pension Credits cancelled if an Employee fails to be employed at least one week in three consecutive calendar years, except that an Employee who has fulfilled the age and service requirements for a Normal or Reduced Pension shall not thereafter suffer a loss of Pension Credits there are "grace periods" for breaks in Covered Employment if an Employee (a) fails to be employed at least one week in 2 consecutive years due to total disability, (b) military service, (c) employment not covored by the Bargaining Agreement or full-time employment with the International Union, (d) employment in a category not covered by the jurisdiction of Local 142 provided the Employee had not less than 80 weeks of contributions paid to the Fund at the time such employment commences (e) employment in a job classification covered by a Collective Bargaining Agreement between an Employer and any other Local Union who is a Member of Teamsters Joint Council #25, in which case a grace period of up to ten calendar years shall be granted provided the Employee returns to Covered Employment and thereafter accumulates 80 weeks of Employer Contributions.					

			NORMAL RETIREM	ENT	EARLY	RETIRM	VES	TING	
PLAN NAME effect. dt.	age	years of credited service	benefit formula	service requirement	yes	no	rqrmts	formula	CONTRIBUTION
Local 544 Transfer &- Warehouse May 1, 1971	57	20 years of con- tinuous service, 5 years under agreemen: 80 weeks of con- tribution (120 wks. for em- ployees enlist- ing between 7/1/67 & 4/1/70; 450 wks. for those enlist- ing there- after)	\$200/mo. thereafter for life. (Transfer employees: retiring after Age 60 receive \$350/mo. for life)  B. Employees with less than 20 years of service at Age 65 benefits as follows: 10 years or more: Transfer - \$3.75/month times number of years with participating Employer + \$3.00 for each additional year with non-participating Employer; less than 10 years - \$3.00/mo. times years of service. Warehouse: 10 years or more: \$2.75/mo. times years of service; less than 10 years with more than one Employer: \$2.20/mo. times years of service.	which was at the time of such employment normally covered by Teamster contracts  (ii) Employment in the same class ification of work in which employe after the Effective Date under a Teamster contract and on which contributions have been made on behal of the Employee  (iii) Employment requiring the usual Teamster skills in tradition al Teamster industries at the time of such employment  (iv) Service in the armed forces if service was entered from Covered Employment.  Subsequent to the Effective Date (i) Employment covered by Teamster contracts up to a maximum					Transfer 35¢/hr. Warehouse 30¢/hr.

			NORMAL RETIR	EMENT	EARLY	RETIRM	VES	TING	
PLAN NAME	mir	nimum							EMPIRATE
effect. dt.	age	years of credited service	benefit formula	service requirement	yes	no	rqrmts	formula	CONTRIBUTION
Local 544 (con't.) .				"Year of Employment" Prior to 5/1/71 1,000 hours of Covered Employment or 25 weeks in the armed forces, one-half credit for 500/18 weeks. Subsequent to 5/1/71 35 weeks of contributions equals one year, one-half year equals 20-35 weeks of contributions. "Break in Service" Shall occur if an Employee is not in Covered Employment for a period of five consecutive years between 2/1/55 and 4/1/69 or for a period of three consecutive years after 4/1/69. The following do not constitute a break:service in the armed forcesabsence due to sickness or injuryabsence due to layoff if at leas 10 weeks of contributions each year (maximum 2 years) are paid. "Continuous Service" (a) In the trucking industryaccumulated years of employment	y t				
				prior to retirement calculated from the Employee's last employment or re-employment date following the last break in service.  (b) Under a Collective Bargaining Agreement - accumulated years of employment prior to retirement excluding years of service not covered under a Collective Bargaining Agreement.  (c) with Participating Employers-accumulated years of employment with the Participating Employer					

			NORMAL RETIRE	MENT	EARLY	RETIRM	VES		-5:
PLAN NAME	min	1 mum							ETHOYER
offect. dt.	age	years of credited service	benefit formula	service requirement	yes	no	rqrints	formula	CONTRIBUTIO
Local 705 January 1973	57 58 OI 59 OI 60 Of	20 20 20 20	\$250/mo. for life \$300/mo. for life \$350/mo. for life \$400/mo. for life	"Service" means the last period of continuous uninterrupted employmen in a covered position with one or a succession of Employers having a Bargaining Agreement with this Union In the following situations employment while represented by another Union may count as service provided that an Employer contributed to another Fund of the International Brotherhood of Teamsters, or Chicago Truck Drivers Union (Independent you receive credit for service under the other Plan if your Employer's business was acquired by an Employer having a Bargaining Agreement with your present Union, and your Employer immediately began contributing to the 705 Pension Fund on your behalf. "Break in Service" Ordinarily, if employment and contributions stop you lose your service and begin over again when contributions resume. However, after 1/1/70, twice during your lifetime the Trustees may approve an application for reinstatement and restore the service you had when employment and contributions stopped, providing the total break in service and contributions do not exceed 24 months and only if:	bn.	X	After 20 years of service	At Age 65 \$250/mo.	\$16/wk.
71		1	•					1.	

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			NORMAL RETIE	REMENT	EARLY	RETIRM	VES:		]
BAIN MAND	miı	nimum							ENVEYED
effect. dt.	age	years of credited service	benefit formula	service requirement	yes	no	rqrmts	fereula	CONTRIBUTION
Local 705 (con't.)				(2) employment and contributions subsequent to the discontinuance are continuous for at least 3 years except for death/disability subsequent to 6 months after the return; and (3) application for reinstatement is made not later than 90 days after the expiration of the requirement for at least 3 years of service and contributions subsequent to a discontinuance, except if death shall occur within the 90 day period; and (4) the total of breaks in service and contributions shall not exceed 24 months and the Trustees shall not grant more than 2 applications for reinstatement. Discontinued employment and contributions shall not be credited as years of service (for purpose of Pension Credit).					
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			NORMAL RETIRE	PARILLY	RETIRM	VEST	-		
DI IN MARCE	mi	nimum							EMPLOYER
PLAN NAME effect. dt.	age	years of credited service		service requirement	yes	no	rqrmts	formula	CONTRIBUTION
Local 710 . 8/1/70	57	20 years in industry last 2 years under L. 710 Agree- ment 80 weeks of contri- butions.	At Age 57*\$300/mo. for life. At Age 60*\$400/mo. for life for retiree's after 5/1/70- *Age at retirement.	"Credit Service" Past Service (effective 5/1/66) Shall be credited to each Employee for whom a contribution has been made during the first two years after the earliest possible Effective Date by his Employer for the period of time prior to such earliest possible Effective Date during which he was in Covered Employment. No credit shall be given for any period of Covered Employment prior to an interruption of Covered Employment of more than 2 years. Future Service Shall be credited to each Employee at the rate of (1) year for each calendar year in which contribution on his behalf have been made for 35 weeks or more and at the rate of contributions. "Covered Employment" (effective 5/1/67) Prior to the Effective Date of employment in a category over which the International Brotherhood of Teamsters has claims to have or jurisdiction On and after the Effective Date employment by an Employer who has satisfied the requirements of participation and who is bound by the Trust Agreement.					\$15/wk.

PLAN NAME effect. dt.			NORMAL RETIR	EARLY	RETIRM	VESTING			
	minimum								ESPLOYLE
	age	years of credited service	benefit formula	service requirement	yes	no	rqrmts	s formula CONTRI	CONTRIBUTIO
Local 710 (con't.)				Loss of Credited Service  (a) Subsequent to the Effective Date, an Employee will lose all his prior Credited Service in the event he is not employed in Covered Employment for a consecutive period of One Hundred Fifty-Six (156) weeks (except military service with re-employment rights and any time during which he was receiving a Retirement Benefit).  (b) In the event an Employer ceases to be a contributing Employer each Employee of that Employer who is an Employee on the date the Employer ceases to be an Employer, shall lose all of his prior Credited Service, unless:  1. An Employee who has fulfilled the conditions for qualification for Retirement Benefit applies for a pension within six months after the date the Employer ceases to be an Employer, or 2. An Employee who has not fulfilled the conditions for qualifications for Retirement Benefits within six months again becomes an Employee by transferring his employment to a different Employer.	d				

			NORMAL RETIREM	EARLY	RETIRM	VESTING			
age   credite		years of credited	benefit formula	service requirement	yos	no	rqrmts	formula	CONTRIBUTION
Central States, Southeast and Southwest Areas 5/1/71	57	20 years; 5 years under Agreement 80 weeks of con- tribution (120 wks. if Member between 7/1/67 1/1/69; 450 wks. if Member after 1/1/69)	- \$300/mo. for life.  B. Retire 57-59 - \$300/mo. for 5 years and \$200/mo. after for life.	"Credited Service" Past Service You will receive credit for years of service which you have accumulated in the Teamster industry as an Employee before you became a Member of the Plan. You will receive one year of past service credit for each calendar year in which you worked at least 1,000 hours and ½ year of credit for 500-1,000 hours of service. Current Service (Future) One year of Pension Credit for each calendar year in which payments have been made into the Fund for at least 35 weeks, and ½ year of Pension Credit for at least 20 but less than 35 weeks. "Con:inuous Service" Means accumulated years of employment prior to retirement, calculated from the Employee's last employment or re-employment date following the last break in service." Break in Service. Employee is not covered for a period of 5 consecutive years between 2/1/55 - 4/1/69 or for a period of 3 consecutive years subsequent to 4/1/60, except for sickness or injury and layoff during which contributions have been paid to the Pension Fund for at least 10 weeks each year up to a maximum of 2 years.					\$14/wk.

[.'				NOR	MAL RETIRE	MENT	EARLY RETIRM VESTICE				
PLAN NAME	age	years of credited		efit for	rmula	service requirement	yes	no	rqrmts	ermula	COMPRESSION COMPRE
Suburban Teamsters of Northern Illinois 8/1/70	60	14 years, 10 years under Agreemen contributions for 70 wks. of any consecutive 104 weeks	20+ 19 18	\$285	There- after (mo.) \$207.50 \$192.50 \$180.00 \$167.50 \$155.00 \$142.50 \$130.00	"Credited Service" Past Service Prorated credit for prior continuous employment in the industry commencing when the Employer begin contributions. Future Service January 1, following the commencement of Employer Contributions on behalf of the Employee - 1 1/10th year of credited service for each 4 weeks of Employer Contributions. One full year of credited service equals 40 or more weeks of Covered Employment. Loss of Credited Service If no contributions are made for 15 weeks in a row unless you are already a "Vested Member" of the Plan. Credited Service is not los if contributions have stopped due to military service and valid leave of absence from the Employer.	se t		10 years service contribu- tions made for 70 weeks out of any con- secutive 104 weeks	henefits healn at maccould have coiled with Normal Retirement Benefit equals Normal Retirement Benefit times actual years of service over yrs. of service at Age 60.	

PLAN NAME effect. dt.			NORMAL RETIREM	EARLY	RETIRM	VEST	EMPLOYER		
	minimum								
	age	years of credited service	benefit formula	service requirement	yes	no	rqrmts	formula	CONTRIBUTION
Local 37 January, 1972	65	10	\$160/mo. for life (max. benefit with 25 years service) Number of years credited service up to 25 times 55 7/10¢ times average weekly contribution rates.	"Credited Service"  Of an Employee includes all of his continuous service prior to his Employer's Admittance Date (Past Service) which was rendered as an Employee in a job classification covered by the Collective Bargaining Agreement. After such Admittance Date (this refers to creditor service) Credited Service includes all continuous service for which contributions are payable to the Pension Fund.  "Continuous Service"  Continuous Service includes all regular, full-time employment with any Employers'. If there has been no break in service continuous service shall include regular, full time employment with any Employers' since the most recent break in service.  Continuous Service and Credited Service shall be counted in years and quarter years. A period of 45 days or more shall be counted as a quarter year and a period of less than 45 days shall be dropped.  "Break in Service"  A Break in Service shall occur whenever a person has four consecutive calendar quarters during which he was not at any time in the regular, full-time employment of an Employer except periods of absence due to sickness, disability and military service.			After 10 years credited service		

			NORMAL RETIREM	ENT	FARLY	RETIRM	VEST	1:::	
DIAN NAME	mi	nimum							EMPLOYER
effect. dt.	age	years of credited service	benefit formula	service requirement	yes	no	rqrmts	Lormula	CONTRIBUTION
Joint Council 84 April 1, 1968	60	15	\$10/mo. times the number of years of service up to 30 years; \$300/mo. maximum benefit for life.	"Credited Service" Past Service equals total years are completed months of continuous service prior to entry, with all Employers having a Collective Bargaining Agreement with a Union whose bargaining contracts have provision for payments into the Employer-Teamsters Joint Council #84 Pension Fund. Future Credited Service "Continuous Service" in years and completed months upon entry into the Plan, commencing 1/1/57. "Continuous Service" Uninterrupted regular service with any Employer having a Collective Bargaining Agreement with a Union whose current contracts provide for payments to the Employer-Teamster Joint Council #84 Pension Fund except for transfers of employment (with certain restrictions), layoffs not to exceed 2 years, military service, sickness/disability, authorized Union duties not to exceed 2 years.			As of 9/1/71 Age 45; 15 years service	Renefits start at Age 60 Remal Profit times years of ser- vice divided by yrs. of ser- vice at normal retire- ment age.	\$14/wk.

			NORMAL RETIR	EMENT	EARLY	RETIRM	VES	TING	
	mir	nimum							EMPLOYER
PLAN NAME	ago	years of credited service	benefit formula	service requirement	yes	no	rqrmts	formula	CONTRIBUTIO
Local 282 March, 1968	65 OI	25	\$300/mo. for life.	"Credited Service" Past Service Requirement equals 36 days of Covered Employment prior to 9/1/54, plus employment covered by a contract with the Union with an Employer who went out of business or discontinued his trucking operations before 9/1/56. Future Service Requirement (2 methods): (a) 25 days of Covered Employment per quarter after 9/1/54 and 36 days/quarter prior to 9/1/54. (b) 150 days of Covered Employment per year even though an Employee may have worked less than 25 days in one of the quarters.  "Break in Service" A break in service shall be deemed to have occurred if an Employee lacks credit for eight consecutive Pension Quarters or if he has earned less than four quarters of credit within any period of twolve consecutive Pension Quarters.  Exceptions to "break in service": disability and those quarters in which absence from credited employment was due to assignment by the Employer to employment not covered by the Pension Fund provided that the Employee has credit for at least 12 Pension Quarters subsequent to such non-covered employment.					56ç/hr.

			NORMAL RETIR	EMENT	EARLY	RETIRM	VEST	1.0	
PLAN NAME	mi	nimum							EMPLOYER
effect. dt.	age	years of credited service	benefit formula	service requirement	yes	no	rqrmts	Formula	CONTRIBUTIO
Local 445 October 1, 1966	65	25	\$350/mo. for life	Requirements for service credit for periods before the Contribution Date:  1. Total of at least 1,600 hours of Covered Employment in the two-year period immediately preceding the Contribution Date of his Employer.  2. At least eight quarters of service credits after the Contribution Date, a quarter year of service credit equals 400 or more hours of Covered Employment in a calendar year except no more than four quarters will be credited in any calendar year.  "Break in Service"  Results in loss of all Pension Credit and occurs when:  1. Failure to gain any credited service for 2 calendar ; years in a row.  2. Failure to earn at least 4 quarters of service in three consecutive years.  (An important exception to the sorvice break is an age factor of 45 and 15 years of service called Deferred Vested Benefit).  In addition to the Deferred Vested Benefit, absences from Covered Employment due to disability (total) up to 12 quarters and work transfe where employment is not covered do not constitute a break in service.			Age 45, 15 years service.	At Age 65 Norual Benefit times, number of years service divided by 25.	

	1		NORMAL RETIREM	IENT	EARLY	RETIRM	VEST		
PLAN NAME	min	years of credited	benefit formula	service requirement	yes	no	rqrmts	iormula	CONTRIBUTION
local 469 September 1, 1972	65	service 15	\$14 times number years of credited service/mo. for life. (30 years of service maximum)  80% of Normal Benefit or 100% of Early Retirement Benefit (whichever is greater)	Past Service Prior to 1/1/65, an Employee shall be credited with a quarter year of Pension Credit for each calendar quarter in which he was employed i Covered Employment (includes periods of employment in a catagory of work not covered by a Gollective Bargaining Agreement by an Employe contributing to the Fund as of its Admittance Date) Future Service (a) A year of credit for each calendar year during which he was employed 1,600 hours or more in Covered Employment or in quarter units as follows:  Hours of Employment Credit Less than 400 0 400 but less than 800 1 800 but less than 1,200 2 1,200 but less than 1,600 3  (b) The total number of hours worked by an Employee in Covered Employment during all years for which contributions were made in his behalf shall be divided by 500 to obtain the number of quarter-year units of Pension Credits, fractions disregarded.			10 years service	Normal Schofit at time of re- t) roment.	55}¢/hr.

			1	NORMAL RETIR	EMENT	EARLY	RETIRM	L. VES	[]::	
	mi	nimum		,						ENPLOYED
PLAN NAME	age	years of credited	benefit	formula	service requirement	yes	no	rqrmts	toranta	CONTRIBUTION
local 469 (con't)					"Break in Service" Results if an Employee has failed to earn at least 2 quarters of Pension Credit in any period of 3 consecutive years except for total disability, (for a period of up to 3 consecutive calendar years for which the Employee failed to earn credit), assignment from Covered Employment, and Pension Credits earned by virtue of actual work in employment covered by a related Pension Plan.  No Employee will lose his Pension Credit if the following conditions are met:  1. 10 years of Pension Credit subsequent to contributions on his behalf from the Employer on and after 9/1/72.  2. If the Employee has received 25 years of Pension Credit.  3. If the absence from Covered Employment is caused by his fail-					
		**			ure to pass a physical exam.					

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			NORMAL RETI	ICEMENT I	MILLE	RETIRM	VES	ΓING	1
PLAN NAME effect. dt.	mi age	years of credited	benefit formula	service requirement	yes	no	rqrmts	formula	EMPLOYER CONTRIBUTIO
Local 478 January, 1973	64	30 OR 25	\$380/mo. for life	"Credited Service" Past Service - prior to 1/1/57: An Employee shall be credited with a quarter year of Pension Credit for each consecutive 3-month period covered by a Collective Bargaining Agreement with Local 478. Future Service - Subsequent to 1/1/57 An Employee shall receive a full year of Pension Credit for each calendar year in which he works at least 1,600 hours in Covered Employment for which contributions are made to the Fund. If employment totals less than 1,600 hours the credit shall be prorated.  "Break in Service" Means a failure to earn at least 2 quarters of Pension Credit in any period of 2 consecutive calendar years subsequent to 1/1/57. An Employee under covered employment after January 1, 1973 who sustains a "break in service" shall lose all Pension Credits. An Employee not actually covered on 1/1/73 with past Pension Credit who had earned Pension Credits prior to 1/1/73 and who does not return to Covered Employment prior to 1/1/75 shall lose all Past Service and Future Service Pension Credits. Breaks which started prior to 1/1/73 shall result in a loss of prior Future Service Credits but not Past Service Credits.	X				58½¢/hr.

			NORMAL RETIREM	ENT	EARLY	RETIRM	VEST	ING	
PLAN NAME effect. dt.	age	years of credited service	benéfit formula	service requirement	yes	no	rqrmts	formula	EMPLOYER CONTRIBUTION
Local 491 December 14, 19	60	13	Monthly Benefit equals number of years of credited service times \$13.30 for maximum of 25 years.	"Continuous Service" Uninterrupted service with one or more Employers under a Pension Agreement with Local 491.  Also included in "continuous service" is employment under a Collective Bargaining Agreement with any Teamsters Local Union provide such employment occurs after your entry into the Plan.  Uninterrupted Service means the Employee has worked for an Employer who has a Pension Agreement with Local Union No. 491.  Interruption of service does not occur during the following absence from work: transfers of employment (maximum 3 months) among any Employers under a collective bargaining agreement with any Teamsters Local Union, layoffs not exceeding 2 years, authorized strike absences due to sickness or injury up to one year, and absences due to lockouts, Union duties, and military service (if employment commences within 90 days after termination).	es,		After 1: years of service	start at	\$14.00/wk.

			NORMAL RETIREM	IENT	EARLY	RETIRM	VEST	1NG	
DIAN PANE	mi	nimum							EMPLOYER
PLAN NAME effect. dt.	age	years of credited service	benefit formula	service requirement	yes	no	rqrmts	formula	CONTRIBUTION
effect. dt. Local 557 September 1, 1971	60		\$170/mo. + \$8/mo. for each year of service above 20 to maximum of 30 years.	Accumulation of Service Credit (Credited Service) Upon application for Pension Benefits, credit for past service is subject to 5 months of service credit (qualifications for past service credit) based upon contri- butions made to the Fund for work in Covered Employment on or after January 1, 1964. Subsequent to 6/1/64-monthly units based on periods of employment for which Employer contributions were made to the Fund on his behalf based upon the following schedule:  1,200 or more hours 12 1,100 - 1,199 11 1,000 - 1,099 900 999 800 899 8700 799 600 699 6500 599 500 599 10 10 10 10 10 11 11 11 11 12 13 13 14 15 15 16 16 17 17 18 18 18 18 18 18 18 18 18 18 18 18 18	x		years age service- years old service; old & 10	-1.e., 40 1 % 20 yrs. 50 years years 45 years years	35¢/br.
		,		lose credit for his service prior to the break. A Break in Service shall be doemed to have occurred in the Employee lacks credit for at least one full year of Service					

			NORMAL RETIR	EMENT	EARLY	RETIRM	VEST	read	
PLAN NAME	mir	ni mum							EWINGTER
effect. dt.	age	years of credited service	benefit formula	service requirement	yes	no	rqrmts	formula	CONTRIBUTION
Local 557 (con't.) .				Credit in any one of six consecu- tive calendar years. However, no break shall be deemed to have occurred provided the Employer has made a cumulative total of at leas 36 months of Service Credit in any one period of six consecutive cal- endar years on behalf of the Employee.	1				
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			NORMAL RETIREM	ENT	EARLY	RETIRM	VEST	ING	
PLAN NAME effect. dt.	mir	years of credited	benefit formula	service requirement	yes	no	rqrmts	formula	CONTLIBETIO
Local 639 July 1, 1972	60	20 yrs. contin- uous	\$110/mo. thereafter for participants prior to	Year of Credited Service A calendar year prior to the Effective Date is 1,000 hours of		x	10 years		35¢/hr.
		service and (6- 10 yrs. coverage	5/1/71. Those becoming participants after 5/1/71; 1st 5 years benefit = 2% of	Covered Employment for one year of credit and 500 hours for 1 year of pension credit.  A calendar year subsequent to the		At Age 60:	Years Service	& of Benefit*	
		under Plan depend-	contributions; thereafter 1.1% of contributions.	Effective Date: 1,400 hours of contributions or 35 weeks for one year's credit and 800 hours or 20			10 12 14	50 60 70	
		ing on date of initial coverage		weeks for } year of credited ser- vice.  "Break in Service"  Shall occur if an Employee is			16 18 20	100 90 80	
		10 yrs. service if join Plan after 5/1/71.		absent from Covered Employment for a period of more than 90 consecu- tive calendar days exclusive of illness for less than 36 consecu- tive months, leave of absence not to exceed 6 months, layoff not to exceed 104 consecutive weeks, and				. Benefit rmnl Re-	
				military service. "Continuous Service in the Industry Accumulated years of credited service prior to retirement calculated from the Employee's last employment or re-employment date following the last break in service.					

			NORMAL RETIREM	ENT	EARLY	RETIRM	VEST	153	
PLAN NAME	min	imum							FIIPLOYFR
effect. dt.	age	years of credited service	benefit formula	service requirement	yes	no	rqrmts	formula	CONTRIBUTION
Local 660 April 1, 1971	60	25	\$412/mo. for 1st 5 years and \$204/mo. thereafter for 11fe.	"Credited Service" Past Service Prior to 9/1/52 Work under a Collective Bargaining Agreement of a local affiliated with the International Brotherhood of Tenmsters. Service since 9/1/52 (Future Service) is credited entirely on the basis of work in Covered Employmen (employment for which an Employer contributes to the Pension Fund.) Pension Credits may also be accumulated for employment while covered by a reciprocal Pension Fund which mutually recognizes transfer for Employees.  "Break in Service" Shall occur when an Employee lacks credit for eight consecutive Pension Quarters or if he has earned less than four quarters within any period of twelve consecutive Pension Quarters (exceptions not listed in the booklet).			15 years service	Renefits start at A.e 60 equal Forsion 11 20 years rervice; if fewer than 20 years, benefits equal Normal Pension times years of service divided by 20.	63¢/hr.

			NORMAL RETIREM	ENT	EARLY	RETIRA	VES.		
DIN YME	mil	nimum							EM POARE
PLAN NAME effect. dt.	age	years of credited service	bonefit formula	service requirement	yes	no	rqrmts	formula	CONTRIBUTION
Local 701 Mid New Jersey Trucking Industry January 1, 1972	65	25	\$19/mo./yr./ service up to 25 years with added increment for service between Age 62 and 65; maximum benefit at Age 65 with 25 years service is \$500/mo. for life.	"Credited Service" Prior to 1/1/58 One year for each year of accumulated seniority in Local 701 plus any seniority as of 1/3/53 transferred from another Teamsters Local Union, for full-time employment rendered in the employ of a participating Employer prior to the Effective Date or if subsequent to January 1, 1958. One year for each 2,000 hours of compensation or the nearest 1/10th year computed proportionately for less than 2,000 hours.  "Break in Service" If you have a "break in service" you lose your credit for service before the break except for discharge, layoff, and leave of absence for Union business, military service or absences during which Related Pension Credits are earned.  (A leave of absence starting within 165 compensable days of another leave is considered part of the same leave).	es		15 years service	Denefits Leart at Age 65. Minimum: 15 years service - \$112.50/ month. Agrimum: 25 years service - \$175/mo.	\$14.20/wk.
								i	-3

			NORMAL RETIREM	ENT	EARI.Y	RETIRM	VEST	ING	
DIAN WAND	mi	nimum							EMPLOYER
PLAN NAME effect. dt.	age	years of credited	benefit formula	service requirement	yes	no	rqrmts	formula	CONTRIBUTIO
Local 707 Freight Carriers September, 1972	65	25 OR 25 OR 30	\$375/mo. for life \$375/mo. for life and \$15/mo. for each year of credited service over 30	"Credited Service"  Past Service - for the period 1/1/37 to 9/1/50. ½ year of Pension Credit for each Pension Quarter in which he worked for at least 36 days in Covered Employment.  Future Service Subsequent to 9/1/50/1 year credit per 25 days of Covered Employment.  "Break in Service"  Results in loss of credited service A "break" occurs if an Employee lacks credit for 12 consecutive Pension Quarters except that an Employee has accumulated 15 years of Pension Credit.  Other Exceptions to "Break in Service"  1. 12 quarters of non-contribution due to disability which is noncompensable under a Workman's Compensation Law.  2. Employee is assigned by the Employer to employment not covered by the Teamster Pension Funds.  An Employee who ceases work in Covered Employment after accumulating 15 years of Pension Credit and who subsequently returns to work in Covered Employment shall be granted any additional credited service earned (a higher benefit level will only result when at least 12 consecutive Pension Quarters are earned).					57å¢/hr.

PLAN NAME  effect. dt.    years of age   years of credited service   years   y	formula			1					
benefit formula service requirement yes no rqrmts  Local 805  January 1, 1971  Local 8	formula			1			imum	mir	DIAN NAME
January 1, 1971  Past Service  Employment in a classification of  work and in an industry which at  the time of employment was normally  covered by a Collective Bargaining  Agreement of the Teamsters.  Current (Future) Service  Is bised on each calendar year of  covered employment for which the  Employer made contributions to the		rqrmts	no	yes	service requirement	benefit formula	credited	age	
Additional Service (credit) Will be granted if: the Trustees approve of a leave of absence and the Employee returns within 30 days after the expiration of the leave; for military service and return to employment within 4 montis after discharge; for disa- bility not exceeding 30 months; and for disability arising from a compensable industrial accident. Loss of Credited Service If an Employee has been laid-off, or employment as a covered Employee has been terminated for a period of more than 30 months, employment prior to such loss does not count for Pension Credit.					Past Service Employment in a classification of work and in an industry which at the time of employment was normall covered by a Collective Bargaining Agreement of the Teamsters. Current (Future) Service Is bised on each calendar year of covered employment for which the Employer made contributions to the Trust Fund for at least 20 weeks. Additional Service (credit) Will be granted if: the Trustees approve of a leave of absence and the Employee returns within 30 days after the expiration of the leave; for military service and return to employment within 4 montis after discharge; for disa- bility not exceeding 30 months; and for disability arising from a compensable industrial accident. Loss of Credited Service If an Employee has been laid-off, or employment as a covered Employee has been terminated for a period of more than 30 months, employment prior to such loss does not count	\$500/mo. for life.			Local 805

			NORMAL RETIREM	ENT	EVICTI	RETIRM	VES	TING	.]
PLAN NAME	mir	nimum							EMPLOYER
effect. dt.	age	years of credited service	benefit formula	service requirement	yes	no	rqrmts	fermula	CONTRIBUTE
Local 806 March, 1963		15	Total of Past Service Pension plus Future Service Pension/mo. Past Service = 1.8% of average annual contributions times number of years past service credit. Future Service = 2.7% of total of all monies contributed on Employee's behalf.	"Credited Service" Past Service Will be computed to the nearest half-year for each year or portion thereof of his continuous employ- ment within the jurisdiction of the Union. Future Service Forty weeks of contributions shall constitute one year of Pension Credit except that no more than one year of future credit shall be allowed for each period of 12 calerdar months of elapsed time. "Participation" (same as "Covered Employment") An Employee shall become a parti- cipart in the Plan as of the first day on which a Contributing Employ- er becomes obligated to make a contribution to the Fund on behalf of such Employee except: -less than 20 weeks for one or more contributing Employer during any pericd of 2 successive fiscal years excluding mental/physical inability estatlished by medical evidenceone period of military service not to exceed 6 years.					\$74/700.

			NORMAL RETIREM	ENT	EARLY	RETIRM	VEST	ING	
mr. 144 144400	mir	nimum							EMPL
PLAN NAME effect. dt.	age	years of credited service	benefit formula	service requirement	yes	no	rqrmts	formula	CONTRI TIO
Local 816 10/1/72 Note: This is the only Pension Plan Booklet available for Local 816	65	25	\$350/mo. for life. \$15/mo. increment for each year of service over 30.	"Credited Service" Past Service Prior to 1/1/59 Ome-quarter year of Pension Credit for at least 25 days in Covered Employment plus credit for prior employment not covered by contributions but for the period of time covered by a Teamster Collective Bargaining Agreement. Subsequent to 1/1/59 Ome-quarter year of Pension Credit per 25 days or more in Covered Employment. "Break in Service" Effective 10/1/72 All Plan Participants who earned Pension Credit through 9/30/70, a 3 year break in service is allowed if prior to 9/30/70 more than 5 years of service was accumulated prior to the break, then a 5 year break is allowed.	X		Any age after 15 years of service for reduced pension or 25 years for full benefits.		\$24.80/wk.

			NORMAL RETIREM	MENT	EARLY	RETIRM	. VEST	12.C	
PLIN NAME	miı	nimum							EMPLOYER
effect. dt.	age	years of credited service	benefit formula	service requirement	yes	no	rqrmts	formula	CONTRIBUTIO
Central Pennsylvania September 1, 1972	57	20	\$350/mo. from Age 57-62 62 at retirement - \$375/mo. 63 at retirement - \$400/mo. 64 at retirement - \$425/mo. 65 at retirement - \$450/mo. Benefits are for life. If retire 57-62, following benefits paid after lst 5 years.: 57 - \$250/mo. 58 - \$275/mo. 59 - \$300/mo. 60 - \$325/mo. 61 - \$350/mo.	Past Service Equals a year of Pension Credit for each year of continuous service an Employee worked for a Member Employer before that Employer nego- tiated the Pension Plan. Current Service Is computed from the first month the Employer makes a contribution to the Central Pennsylvania Team- ster Pension Fund. Each full year for which a contribution is made counts as one year of current service. "Qualifications for Employees who are separated from the Plan because they were fired, quit, or laid off: 1. Separation from the Plan for more than 5 years amounts to a loss in benefits unless you have a vest- ed interest. 2. Members who become management with any Member Employer may have their credits "frozen" for the period of time that they function in a supervisory capacity. 3. Members of the Fund who work for any Local Union will have their credits "frozen" as long as they work for the Local Union.			57 yrs. old + 10 yrs. member- ship in Fund.	57 gets accrued credits	\$60.68/mo maximum

			NORMAL RETIREM	ENT	EARLY	RETIRM	VES	1	
PLAN NAME	age	years of credited service	benefit formula	service requirement	yes	no	rqrmts	Cornula	CONTRIBUTIO
Cumberland Md. Area Teumstors Pension Fund October 1, 1970	60	15 5 years under Plan.	\$214/mo. for life. OR \$300/mo. for lst 5 years and \$165/mo. thereafter	Computation of Credited Service - 10 months contributions/year/participant.  Prior Service - prior to 6/1/55  For each year during which Participant worked at least 10 months as an Employee on the payroll of an industry Employer is treated as a year of Credited Service.  Prior Service before becoming a Participant but subsequent to June 1, 1955 - for each calendar year during which an Employee was carried for at least 10 months on the payroll of an Employer who became a contributing Employer after June 1, 1955.  Current Credited Service  A year of Credited Service equals each calendar year during which a Participant has worked at least 10 months and contributions are made on behalf of the Participant.  (Credit for absence from work due to injury, sickness, layoff or legitimate business of the Union will be given if a contribution has been made).  "Continuous Service"  Must be maintained or previous credited service is forfeited except for certain job transfers, authorized strikes and lockouts, military service, periods of absence due to layoffs, sickness, and injury not to exceed 2 years, absence due to Union business, vesting rights with Pension beginning at age 60, and failure of the Employer to make the required con-			Age 45; 15 years service; 5 years under Plan.	Benefits start at Age 60 per schedule according to age at termina- tion.	\$14/wk.

			NORMAL RETIREM	ENT	EARLY	RETIRM	VEST	11:G	]
	mi	imum							EMPLOYER
offect. dt.	age	years of credited service	benefit formula	servico requirement	yes	no	rqrmts	formula	CONTRIBUTION
gerstown (Md.). tor Carriers Teamsters tober 1, 1970	57	20	\$300/mo. for 1st 5 years \$170/mo. thereafter	"Continuous Service" Is uninterrupted regular service with any Employer having a Collective Bargaining Agreement whose current contract provides for payments to the Hagerstown Motor Carriers and Teamsters Pension Fund, except for transfers of employment (among any of the Employers having agreements with Local 992 with provision for payment to the Hagerstown Motor Carriers and Teamsters Pension Fund), layoffs not exceeding 2 years, authorized strikes, lockouts, military service, sickness or disability not exceeding 2 years, and absences due to authorized Union duties. "Credited Service" Past Credited Service: is granted if you enter the Plan at the same time as the Employer and is equal to the total number of years and completed months of continuous service, prior to September 1, 195 with all participating Employers. "Future Service Equals continuous service in years and completed months subsequent to the Employee's entry into the Plan	8				\$13.99/wk.

			NORMAL RETIREM	IGNT	EVICTA	RETIRM	V12-		
PLAN NAME		years of credited	benefit formula	service requirement	yes	no	rqrmts	Tormula	CONTRIBUTION
effect. dt.	age	service							
New England Teansters & Trucking Industry Pension Plan November 1, 1971	O	25 2 years under Plan. 30	\$375/mo. for life  75% of Normal Benefit.	Past Service Credit In general, credit for years of employment in the past will be given if such employment was with an Employer who is a Contributing Employer to the Fund and if the work was in the jurisdiction of one of the Local Unions or for one of the Local Unions or for an Employer Association or Welfare Trust Fund which is a Contributing Employer. One year equals 135 days of Covered Employment in a job classification covered by a Collective Bargaining Agreement then in effect between a Local Union and Contributing Employer.  Future Service Based on the following schedule:  Hours Employment Months Credi less than 150 0 150-300 1 300-450 2 450-600 3 600-750 4 750-900 5 900-1050 6 1050-1200 7 1200-1350 8 1350-1500 9 1500-1650 10			Same as Early Retire- ment	Age 52; 15 years service.	\$15/wk.
	*			1650-1800 11 over 1800 12					

			NORMAL RETIR	REMENT	EARLY	RETIRM	VES	1	1
DUIN NIME	mi	nimum						!	EXPLOYER
PLAN NAME effect. dt.	age	years of credited service	benefit formula	service requirement	yes	no	rqrmts	Formula	CONTRIBUTION
New England Teamsters & Trucking Industry Pension Plan (con't.)	age			"Break in Service" It shall be considered a break in Covered Employment and previous credit will be cancelled if an Employee leaves Covered Employment and subsequently fails to earn at least 8 months of Future Service in any one of six consecutive calendar years except that the cumulative contributions during the 6 consecutive years total at least 5,000 hours.  Other exceptions:  1. For certain disability and armed service. 2. If a break in service is followed by an amount of Future Service credit at least equal to the amount not earned during the break					

			NORMA	AL RETIREM	ENT	EARLY	RETIRM	VES	T.EG	
DI IN NAME	mi	nimum								EMPLOYER
PLAN NAME	age	years of credited service	benefit form	mula	service requirement	yes	no	rqrmts	formula	CONTRIBUTIO
New York Central Teamster June 1, 1971	57	20 5 years under Agree- ment 450 weeks under Fund. (120 wks. if member between 7/1/67 - 1/1/69 80 wks. if mem- ber prior to 7/1/67)	At Age 57: \$30 5 years and \$20 thereafter. At Age 60: \$35 life.	00/mo.	Past Service Years of service accumulated in the Teamster industry based on 1 year of credit for each 1,000 hours worked per year (before membership in the Teamster Plan). 500-1000 hours = ½ year credit. Current Service (Future) After you become a Member of the Plan, one year of credit for each calendar year for payments made to the Plan for at least 35 weeks, and ½ year credit for payments of more than 20 hut less than 35 week Loss of Credited Service Non-Teamster employment for 5 con- secutive years during the period 2/1/55 and 4/1/69 and three con- secutive years after 4/1/69 will result in the loss of credits prior to that time except for military service, absence on account of lay-off with payment into the Fund for at least ten weeks per year, and sickness or injury.					\$1.4/wk.

1	1		NORMAL RETIREM	ENT	EARLY	RETIRM	VES		]
PLAN NAME	age	years of credited	benefit formula	servico requirement	yes	no	rqrmts	resaula	CONTRIDETION
Pension Fund of NYC Trucking Industry October 1, 1972	65 OI	25	\$350/mo. for life additional \$15/mo. for each year of credited service over 30.	Accumulation based on quarter-year units. "Credited Service" Past Service prior to Sept. 1, 1950 An Employee shall be credited with one quarter-year of Pension Credit for each quarter in which he worked at least 36 days in Covered Employment (with a Collective Bargaining Agreement with Local 807) Future Service After September 1, 1950 Except for the period 9/1/50 through 11/30/54 one quarter year credit shall be given for at least 25 days worked in Covered Employment (Covered Employment shall include employment prior to the time contributions to the Pension Fund began but limited to employment covered by a Collective Bargaining Agreement with Local 807) but during the period 9/1/50 through 11/30/54 one quarter year credit shall be given for 36 or more days of Covered Employment. Non-Work Periods Credited Are credited if due to disability arising from Covered Employment for a period not exceeding 24 months compensated under the Workman's Compensation Law and military service provided the Employee makes himself available within 90 days after release from active duty or 90 days after recovering from a disability continuing after his release from active duty.			25 years service	domat Benefit	59¢/hr.

			NORMAL RETIREM	IENT	EARLY	RETIRM	VEST	177	1
PLAN NAME	mir	imum							ENPLOYER
effect. dt.	age	years of credited	benefit formula	service requirement	yes	no	rqrmts	formula	CONTRIBUTION
Pension Fund of NYC Trucking Industry (con't)				"Break in Service" Will result in loss of credited service prior to the break and will be deemed to have occurred if an Employee lacks credits for 12 consecutive Pension Quarters, ex- cept for disability not to exceed 12 such quarters (includes sick- ness), and Pension Quarters in which related credits were earned by virtue of actual employment covered by a Related Pension Plan.					
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1			NORMAL RETIREME	ENT	EARLY	RETIRM	VE. 5	11.1G	1
PLAN NAME	m1r	nimum							EPLOVER
effect. dt.	age	years of credited service	benefit formula	service requirement	yes	no	rqrmts	formula	CONTRIBUTION
NYS Teamsters Conference - Pension & Retirement Fund 9/1/67	60	15	Monthly Benefit equals sum of number of years of service prior to 1/1/54 times \$10 and 2.6% of aggregate of all contributions made in Employee's behalf but not less than \$10/mo. for each year of participation in the Plan.	"Credited Service" Prior to 1/1/54 For wime spent in the employment of one or more Participating Employers in contractual relations with the Union provided that contributions were made as of the Effective Date on behalf of the employee.  Service Subsequent to 1/1/54  A Member who becomes a Member refter 1/1/54 shall be entitled to credit for time spent in the employ of one or more participatinn Employers in contractual relation with the Union provided contributions were made on behalf of the Employee.  For purposes of calculating years of participation in the Plan, one year s credit shall be allowed for each Fiscal Year prior to 1961 during which \$75 or more was contributed on behalf of the individual Member.  Commencing 1/1/61, one year's credit is based on the following contribution schedule:  1961-1962-1963  less than 7½¢ \$75.00 or more 7½¢ or more \$120.00 or more 1964 on  less than 7½¢ \$75.00 or more 7½¢ but less than \$120.00 or more 7½¢ but less than \$120.00 or more 12½¢  12½¢ but less than \$180.00 or more					\$14/wk.

			NORMAL RETIR	EMENT	EARLY	RETIRM	VE:	1 11	
B/ 11/ 3:41/19	mir	nimum	,			1			EW LOYES
PIAN NAME	age	years of credited service	benefit formula	service requirement	yes	no	rqrmts	Franla	CONTENENTION
NYS (con't.)				"Break in Sorvice"  A Member who censes to be a Member and then again becomes a Member shall in no event be entitled to credit for service prior to the time he last becomes a Member, except in the case of a pensioner who is re-employed by a participating Employer and thereupon again becomes a Member.  A member shall cease to be a member if, for any reason except illness, after January 1, 1954, he is not employed by a Participating Employer for a period of 2 years; and membership also ceases upon disability retirement, retirement, and death prior to retirement					

			NORMAL RETIREM	SNI	BAILDI	RETIRM	VEST	1.10	0
D1 131 374119	min	imum							ENPLOYER
PIAN NAME effect. dt.	age	years of credited service	benefit formula	service requirement	yes	no	rqrmts	iormula	CONTRIBUTION
Trucking Employees of North Jersey Welfare Fund, Inc. March 1, 1972	57 OF	20	\$360/mo. for 1st 5 years & \$275/mo. for 1ife.  Normal Benefit.  Benefits increase \$16/yr of service above 20 to maximum at Age 62 with 25 years of \$440/mo. for 1st 5 years.	"Credited Service" Past Service Prior to September 1, 1952, an Employee shall be credited with a year of Pension Credit for 36 days por year of Covered Employment. Future Service After September 1, 1952, an Employ- ee shall be credited with one quarter year of credit for each Pension Quarter in which he has worked for 25 days or more in Covered Employment.  "Break in Service" A break in service shall be deemed to have occurred if an Employee lacks credit for eight consecutive Pension Quarters or if he has earn- ed less than 4 quarters of Pension Credits within any period of 12 consecutive Pension Quarters, exceptor periods of disability (not to exceed a total of 12 quarters) military service, or absence of credit due to assignment of Employ- ee to non-covered employment, (max. 12 quarters). An Employee who would be denied Pension Credits because of a "break in service" shall retain credit for such Pensio Credits provided: (1) The sum of the years of Covered Employment prior to such break and subsequent to such break is not less than 15.	t		15 years service	Renefits at Age 57 Normal Renefit times the number of years of service divided by 20 if fewer than 20 years service	59¢/hr.

			NORMAL RETIF	REMENT	EARLY	RETIRM	VES	risd	1
DI AN MAND	mi	nimum							EMPLOYER
effect. dt.	age	years of credited service	ben fit formula	service requirement	yes	no	rqrmts	iormula	CONTRIBUTION
Trucking Employees of N. New Jersey (con't.)				(2) Employment during the break was continuous but contributions to the Pension Fund were not required by the Collective Bargaining Agreement.  (3) The Employee has accrued at least eight quarters of Pension Credits subsequent to the date on which he would have had a "break in service".					
		Sa.							

			NORMAL RETIRE	MENT	EARLY	RETIRM	VEST	1.5G	
PLAN NAME	mi	n1mum						1	EMPLOYER
PLAN MANE		years of	benefit formula	service requirement	yes	no	rqrufts	Formula	CONTRIBUTION
effect. dt.	age	credited							
effect. dt.  Western Pa. Teamsters & Employees July 21, 1971	60	15; 24 mos. of Employer con- tribution	\$12/mo. times years of service up to 25 years for life.	Past Service  An Employee shall be given credit from the date of his last employment by his present Employer or predecessor Employer(s) in the industry to the date the Employer joined the Pension Plan.  Future Service  Credit will be accumulated so long as the Employee is employed by any Employer in the Industry who is a party to the Pension Agreement with the Union.  Terms under which an Employee shall lose all of his rights of credited service:  1. Lay-off for more than two yrs. (extendable during mitigating economic conditions)  2. Unrenewed leave of absence for non-occupational or occupational disability in excess of two years.  3. A period of more than one year between termination of service as a result of resignation or dis-			45 yrs. old & 15 yrs. service	start at	
				charge with one Member Employer and employment with the same or another Member Employer.					

age	years of credited service	benefit formula  For employment prior to	service requirement	yes	no	rqrmts	cormula	ENPLOYER CONTRIBUTION	
	credited	For employment prior to		yes	no	rqrmts	iornula	CONTRIBUTION	
65	-							CONTRIBUTION	
		8/1/53 - \$8.50/mo./yr. service. For employment after 8/1/53 - \$8.50/mo./yr. service. No Maximum.	following such termination, he shall accrue benefits for future Employment which shall be added to the benefits which he had previously			Age 45 10 years service.	Benefits begin at Age 65 sume for- mula as Normal Benefits.	\$2.60/day	
				Current Service  A fuil year consists of 250 days, reduced proportionately to a minimum of 75 days in a year.  Re-employment  If the Employment of a Member of the Plan who has been such for one or more years is terminated, such Member shall remain in the Plan as an inactive Member and thereafter, if he again becomes an Employee of an Employer, within five Plan years following such termination, he shall accrue benefits for future Employment which shall be added to the benefits which he had previously accrued prior to the termination of	Current Service  A full year consists of 250 days, reduced proportionately to a minimum of 75 days in a year.  Re-employment  If the Employment of a Member of the Plan who has been such for one or more years is terminated, such Member shall remain in the Plan as an inactive Member and thereafter, if he again becomes an Employee of an Employer, within five Plan years following such termination, he shall accrue benefits for future Employment which shall be added to the benefits which he had previously accrued prior to the termination of	Current Service  A full year consists of 250 days, reduced proportionately to a minimum of 75 days in a year.  Re-employment  If the Employment of a Member of the Plan who has been such for one or more years is terminated, such Member shall remain in the Plan as an inactive Member and thereafter, if he again becomes an Employee of an Employer, within five Plan years following such termination, he shall accrue benefits for future Employment which shall be added to the benefits which he had previously accrued prior to the termination of	Current Service  A full year consists of 250 days, reduced proportionately to a minimum of 75 days in a year.  Re-employment  If the Employment of a Member of the Plan who has been such for one or more years is terminated, such Member shall remain in the Plan as an inactive Member and thereafter, if he again becomes an Employee of an Employer, within five Plan years following such termination, he shall accrue benefits for future Employment which shall be added to the benefits which he had previously accrued prior to the termination of	Current Service  A full year consists of 250 days, reduced proportionately to a mini- mum of 75 days in a year.  Re-employment  If the Employment of a Member of the Plan who has been such for one or more years is terminated, such Member shall remain in the Plan as an inactive Member and thereafter, if he again becomes an Employee of an Employer, within five Plan years following such termination, he shall accrue benefits for future Employment which shall be added to the benefits which he had previously accrued prior to the termination of	

			NORMAL RETIREM		RETIRM	VE:			
PLAN NAME effect. dt.	age	years of credited service	henefit formula	service requirement	yes	no	rqrmts	(orisula	CONTRIBUTIO
Western Conference November 1, 1972	65	Age Re- tirement Benefit of at least \$10 (por table) 600 cov- ered hrs. of work in 2 con- secutive years.	Product of Basic Retirement Credit and Contribution Ratio on date of Retirement.  Credit equals sum of Future & Past Service Credit to maximum of \$100 Future = \$2.13/1000 covered hours. Past = \$4/yr. to maximum of \$78.33. Ratio = sum of 83% of the excess of contribution rate over 20¢ divided by 10¢.	Past Employment An Employee shall have Continuous Past Employment for all unbroken Employment with an Employer:  (a) If he is in Covered Employment with such Employer on the date it becomes a Covered Employer with respect to the Collective Bargain- ing Unit of which he is then a Member;  (b) If he is in Employment during May, 1955 with such Employer and if, prior to May 1, 1975 or the Employee's retirement under this Plan, whichever first occurs, such Employer becomes a Covered Employer with respect to the Collective Bargaining Unit of which he was a Member during May, 1955, provided such Employee has had no break in Past Employment between June 1, 1955 and the date of his first Covered Hour (an hour of employment covered by an Employer Contributions).  "Brenks in Past Employment"  If in 2 calendar years after employ ment be has a total of less than 600 hours of active employment.  "Brenk in Service"  After the first "Covered Hour" but less than 7,500 covered hours a break in service is constituted by a total of less than 600 hours in any two years provided that the end of the second year is at least two years beyond the first covered hour, except for cortain causes such as disabil- ity, military service or service wi an affiliate not covered, by the Plan			service 3000 cov- ered hour	Nonefit. Verted Benefit:	And Benefit 54 95 53 90 52 83 51 80 56 73 45 50 Payable in full at Age 65 or at reduced rat at Age 60.

Exhibit B
Register of Retirement Benefit Plans

(See Opposite)

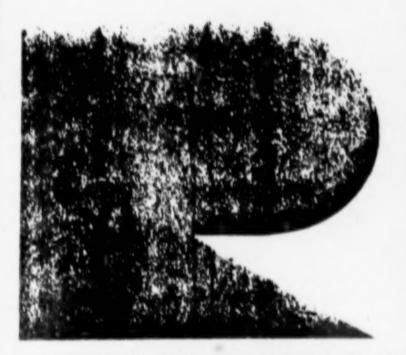
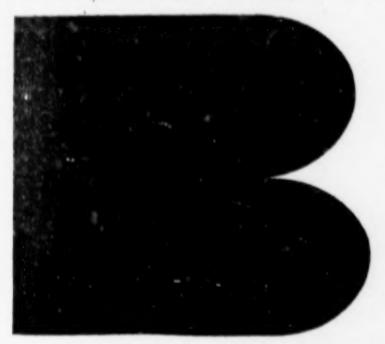


EXHIBIT B



REPORTED UNDER THE WELFARE AND PENSION PLANS DISCLOSURE ACT





U. S. DEPARTMENT OF LABOR/Labor-Management Services Administration Washington, D. C. 20210

	(mplayer (mplayer Association, (mplayer (representate or Plan	City and State	Plea	Canada	Adminst Vision	14	(mphiper, (mphiper Association (mphipes Organization or Plan	City and State	-	-	-
234707 644776	TAPE MARK COMPANY, THE TAPE CRAFT INCORPORATED	WEST SAIRT PAUL, MININ AMPRISTON, ALA	02 02	01	01	221374	TAYLOR MANUFACTURING COMPANY	TAYLOR, TEX	01	01	01
109227	TAPPAR COMPANY, THE TAPPAR COMPANY, THE TAPPAR COMPANY, THE	LOS AMGELES, CALIF MANSFIELD, OHIO MARSFIELD, OHIO MURRAY, KY	02 02 01	01 01 02	01	167277 232131 079696 227742 190146	TAYLOR METAL PRODUCTS COMPANY TAYLOR PUBLISHING COMPANY TAYLOR ROGERS & TRACY INCORPORATED TAYLOR SANTH & TAYLOR COMPANY TAYLOR SUPPLY COMPANY	MARSFELD, ONIO DALLAS, TEX CHICAGO, R.L CHESTER, W. VA DI TROFF, MICH	01 01 01	01 03 01 02	01 01 01
(45 <b>49</b> 235534 243 <b>89</b> 5	TAPPAR COMPARY, THE TAPPAR ZEE NATIONAL BANK TAPPER LUMBER SUPPLY INCORPORATED TAPPIR'S INCORPORATED & AFFILIATES	MURRAY, KY NYACK, N Y HOUSTON, TEX NEWARK, N ;	01 02 02 02	05 01 01	01 01 01	040159 014671 158897 057359	TAYLOR WINE COMPANY INCORPORATED TAYLOR WINE COMPANY INCORPORATED TAYLOR WISEMAN TAYLOR & SLEEPER TAYLOR COLOUITY COMPANY	HAMMONDSPORT, N Y HAMMONDSPORT, N Y MOORESTOWN, N J SPARTANBURG, S C	02 01 04 02	01 01 01	01 01 01
219934 217294	TARAPATA MACMAHON ASSOCIATES	CHAMBLEE, GA	01	01	01	224837	TAYLOR DUMP MANUFACTURING COMPANY	AMAHEM, CALIF	02	01	ÕÌ
241905	MCORPORATED TARAPATA MACMANON ASSOCIATES MCORPORATED TARG & DIRNER INCORPORATED TARPYS, TOM MARKET INCORPORATED	BLOOMFIELD HILLS, MICH BLOOMFIELD HILLS, MICH CHICAGO, ILL COLUMBUS, OHIO	02 01 02	01 01 02 01	01 01 01	211930 155201 034817 034818 156971	TAYLOR MARTIN PAPER INCORPORATED YAYLOR WESON MARIUFACTURING COMPANY YAYLOR WINFIELD COMPORATION. THE TAYLOR WINFIELD COMPORATION. THE TAYLOR, CMARLES G & SONS INCOMPORATED	FORT WAYNE, IND INC REES ROCKS, PA WARRER, OHIO WARRER, OHIO WILMINGTON, DEL	01 01 01 01	01 03 02 03 01	01 01 01
213205 193760 221351 239711 239757	TARRANT DISTRIBUTORS INCORPORATED TARRANT DISTRIBUTORS INCORPORATED TARRANT SAVINGS ASSOCIATION TARRANT SAVINGS ASSOCIATION TASCO INCORPORATED	HOUSTON, TEX HOUSTON TEX FORT WORTH, TEX FORT WORTH, TEX CHICAGO, ILL	02 01 01 02 02	01 01 01	01 01 01 01	211298 099879 251400 240631 234578	TAYLOR, FRAME F COMPANY TAYLOR, MALSEY IN COMPANY TAYLOR, LOU INCORPORATED TAYLOR, MOSES MOSPITAL TAYLOR, MELSON A COMPANY INCORPORATED	FRAMMORT, NY WARREN, OHIO HIALEAL, FLA SCRANTON, PA GLOVERSVRLE, NY	01 01 01 02	02 03 01 01	01 01 01 01
145899 178269 020588 029190 028973	TASKER, A INCORPORATED TASSELL INCUSTRIES INCORPORATED TASTY SALES CORPORATION TATE BUILDERS SUPPLY COMPANY INC TATE BUILDERS SUPPLY COMPANY INC	FALLS CHURCH, VA GRAND RAPIDS, MICH PHILADELPHIA, PA COVINGTON, NY COVINGTON, NY	02 02 01 01 02	01 01 01	01 01 01 01	240838 008008 031683 168325 115360	TAYLOR, S.G. CHAIN COMPANY INCOMPORATED TAYLOR, S.G. CHAIN COMPANY INCOMPORATED TAYLOR, THOMAS & SOMS INCOMPORATED TAYLOR, THOMAS & SOMS INCOMPORATED TAYLORS INCOMPORATED	HAMMOND, IND HAMMOND, IND YORK, PA HUDSON, MASS PROYO, UTAN	81 82 82 91	03 01 01 01 02	01 01 01 01
175757 066646 040839 143207 217321	TATHAM LAIRD INCORPORATED TAX SERVICE OF ORANGE COUNTY INC TAXICASS OF CINCINNATI INCORPORATED	BALTIMORE MD CHICAGO, ILL SANTA ARA, CALIF CINCINNATI, OHIO MEMPHIS, TENIR	01 02 01 02 01	01 02 01 02 01	01 01 01 01	186554 203930 126010 198147 164475	TAYRTON, H W COMPANY INCORPORATED TAYTEC CORPORATION TEAGUE BRICK & TILE COMPANY TEAGUE, C C & SOR CORSTRUCTION COMPANY TEARSTERS AFFILIATES PERSION PLAN	WELLSBORD, PA COLUMBUS, OHIO TEAGUE, TEX SHERMAR, TEX DETROIT, MICH	61 61 61	02 01 01 01	01 01 01 01
130431 165908 207697 1069 <del>77</del> 232181	TAYLOR PAPER COMPANY TAYLOR & FERR COMPANY TAYLOR & GASKIR INCORPORATED TAYLOR & GASKIR INDIANA BRIDGE COMPANY TAYLOR BEDOING MARUFACTURING COMPANY	TULSA ONLA WINDSOR, COMM OLTROIT, MICH DETROIT, MICH TAYLOR, TEX	02 01 01 01	01 02 03 02 01	01 01 01 01	029475 110777 104844 216959 128269	REAMSTERS CENTRAL PENNSYEVANIA REAMSTERS CENTRAL STATES SE SW TEAMSTERS INDIANA CONFERENCE TEAMSTERS IN BREWERY & SOFT DRIME WIRTS TEAMSTERS KONT COUNCIL 16	READING, PA CHICAGO, R.E. SOUTH BEND, IND SAN FRANCISCO, CALF NEW YORK, N.Y.	01 01 05 05	04 03 04 03 04	02-2 02-2 04 02-2 04
10970) 164763 134941 188976 139439	TAYLOR DRUG STORES INCORPORATED TAYLOR ELECTRIC COOP INCORPORATED TAYLOR FORCE A PIPE WORKS	WIRSTON SALEM, N C LOUISYNLE, NY MERNEL, TEX BELLWOOD, ILL CHICAGO, RL	01 01 01 01	01 01 02 04	01 01 01 01	119010 098093 035294 138340 051931	TEAMSTERS KONT COUNCE, 32 TEAMSTERS KONT COUNCE, 40 TEAMSTERS KONT COUNCE, 40 TEAMSTERS KONT COUNCE, 41 TEAMSTERS KONT COUNCE, 41 TEAMSTERS KONT COUNCE, 43	PITTSBURGH, PA PITTSBURGH, PA CLEYLAND, OHIO DETROIT, MICH	01 01 01 01	62 62 64 62 66	02-2 02-2 02-2 02-2 02-2
197637 197637 197637 197633 197634	TATION FORCE & PUT WORKS TATION FORCE & PUT WORKS TATION FORCE & PUT WORKS	CHICAGO, B.L. CHICAGO, B.L. CHICAGO, B.L. CHICAGO, B.L. CHICAGO, B.L.	01 01 01 01	04 03 04 03 02	01 02-1 01	000627 227875 129193 013726 181053	TEAMSTERS JOINT COUNCE, 53 TEAMSTERS JOINT COUNCE, 62 TEAMSTERS JOINT COUNCE, 83 TEAMSTERS JOINT COUNCE, 84 TEAMSTERS JOINT COUNCE, 84	PHILADELPHIA, PA BALTIMORE, NO RICHMORD, VA CHARLESTOR, W VA PHOENIX, ARIZ	01 01 01 01	05 02 01 04 03	62-2 62-2 62-2 62-2 62-2
99 (4) 159 (4) 140 (4) 140 (4)		CHICAGO, R.L. CHICAGO, R.L. ROCHESTER, M.Y. LOUISVILLE, MISS	01 01 01	03 01 03	02-1 02-1 01 01	007954 214111 033328 083868	TEAMSTERS LU 6.6 A.367 & 368 TEAMSTERS LU 25	LONG ISLAND CITY, N Y SAINT LOUIS, MO NEW YORK, N Y NEW YORK, N Y	*	3033	07 2 07 2 07 2 07 2

*	Capinger Capinger Association, Capinger Organization or Plan	City and State	Par	Comme	Adminis trate	*	Captoper, Captoper Association, Captopus Organization or Plan	City and Shain	~	-	-
239883 022953 163682 192100 966865	TEAMSTERS LU 27 TEAMSTERS LU 32 TEAMSTERS LU 37 TEAMSTERS LU 39 TEAMSTERS LU 39 TEAMSTERS LU 52	MEW VORK, N Y WASHINGTON, O C EAST ORANGE, N J BUFFALO, N Y CLEVELAND, OHIO	01 01 01 01	09 09 01 01	02 2 02 2 02 2 02 2	247650 063443 037832 035141 054063	TEAMSTERS-LU 200 TEAMSTERS-LU 301 TEAMSTERS-LU 316 TEAMSTERS-LU 316	DETROIT, MICH WALKEGAR, R.L. BALTIMORE, MD SYRACUSE, N Y SYRACUSE, N Y	01 01 01 01	22 24 24 24 24 24 24 24 24 24 24 24 24 2	6.5 6.5 6.5 6.5 6.5
241220 245035 222968 216364 104012	TEAMSTERS LU 67 TEAMSTERS LU 67 TEAMSTERS LU 80 TEAMSTERS LU 84 TEAMSTERS LU 85	WASHINGTON, D.C. WASHINGTON, D.C. NEW YORK, R.Y. JERSEY CITY, N.J. SAR FRANCISCO, CALIF	01 01 01 01	03 03 03 09	02 2 02 2 02 2 02 2 02 2	202640 045018 156723 123684 249650	TEAMSTERS-LU 330 & 423 TEAMSTERS-LU 338 TEAMSTERS-LU 348 TEAMSTERS-LU 345 TEAMSTERS-LU 343	ELGIM, R.L. MOUNTY VERMON, N.Y. YOUNGSTOWN, OHIO BALTIMORE, MO NEW YORK, N.Y.	01 01 04 01	93 93 93 91	62.5 62.5 62.5 63.5
234276 185765 154837 248374 238564	TEAMSTERS LU 102 TEAMSTERS LU 113 MILK & ICE CREAM DRIVERS TEAMSTERS LU 115 TEAMSTERS LU 120 TEAMSTERS LU 122	NEWARK, N J CANTON, OHIO PHILADELPHIA, PA SAINT PAUL, MININ NEW YORK, N Y	01 01 01 01	04 04 03 01 02	02 2 02 2 02 2 02 2		TEAMSTERS-LU 364 TEAMSTERS-LU 377 TEAMSTERS-LU 377 TEAMSTERS-LU 387 TEAMSTERS-LU 387	SOUTH BERD, IND YOUNGSTOWN, OHID YOUNGSTOWN, OHID BOSTOM MASS CLEVELAND, OHIO	- 81	30 5 5 5 5	60.7 60.7 60.7 60.7
14759   14759   14657 247449 813734	TEAMSTERS LU 122 TEAMSTERS LU 125 TEAMSTERS LU 125 TEAMSTERS LU 123 TEAMSTERS LU 124	NEW YORK, N Y MENSEY CITY, N J NEWARK, N J SAINT LOUIS, MO TRENTON, N J	01 01 01 01	09 04 03 63	02 2 02 1 02 2 02 2 02 2	163383 166098 204448 228806 219430	TEAMSTERS-LU 400 TEAMSTERS-LU 406 TEAMSTERS-LU 416 TEAMSTERS-LU 418 TEAMSTERS-LU 422	CLEVELAND MERCHTS, CHIED MENNAME, N. J. CLEVELAND, CHIED GARFIELD, N. J. CLEVELAND, CHIED	01 01 01 01	01 60 64 63 63	67 67 67
087984  73902 055244 041499 245852	TEAMSTERS LU 140 TEAMSTERS LU 142 TEAMSTERS LU 145,443 & 677	LONG ISLAND CITY, N Y CINCINNATI, OHIO GARY, IND BRIDGEPORT, CONN PHILADELPHIA, PA	01 01 01 01	04 04 04 04 03	02 2 02 2 02 2 02 2 02 2	159502 159759 173154 138455 051919	TEAMSTERS-LU 426 TEAMSTERS-LU 436 TEAMSTERS-LU 445 TEAMSTERS-LU 445 TEAMSTERS-LU 445	BALTHHORE, MD CLEVELAND, ONNO VAR'S GATE, N Y YOMKERS, N Y YOMKERS, N Y	01 01 01 01	200	82 82 82 82
168091 068514 093539 064261 079414	TEAMSTERS LU 168 TEAMSTERS LU 169 TEAMSTERS LU 179, 330, 423 & 673 TEAMSTERS LU 187 TEAMSTERS LU 193	BOSTOM, MASS PHILADELPHIA, PA ELGIR, ILL PHILADELPHIA, PA IMOLARAPOLIS, IND	01 01 01 01 01	09 04 01 09 04	02 2 02 2 02 2 02 2 02 2	075454 211834 092514 168253 022144	TEAMSTERS-LU 453 TEAMSTERS-LU 453 TEAMSTERS-LU 456 TEAMSTERS-LU 471 TEAMSTERS-LU 473	CUMBERLAND, MD CUMBERLAND, MD ELMISFORD, N Y MINNEAPOLIS, MINN CLEVELAND, ONIO	01 01 01 01	13161	62 2 62 2 62 2 62 2 62 2
19277 19277 19377 19377		NEWARK, M J CLEVELAND, OHIO BRORK, N Y HEW YORK, M Y PYTTSBURGH, PA	01 01 01 01	04 03 04 04	02 2 02 2 02 2 02 2 02 2	247503 178615 164394 076936 149900	TEAMSTERS-LU 473 TEAMSTERS-LU 476 TEAMSTERS-LU 478 TEAMSTERS-LU 478 TEAMSTERS-LU 482	CLEVELAMD, OMBO BUFFALO, N.Y LIMOEN, N.J NEWARN, N.J ROCKFORD, BLL	01 01 01 01	22022	61 61 61
279538  44279 979159 098094  14931	TEAMSTERS LU 239 TEAMSTERS LU 240 TEAMSTERS LU 249	NEW YORK, N Y LITTLE NECK, N Y NEW YORK, N Y PITTSBURGH, PA BUFFALO, N Y	04 01 01 01	02 01 04 04	02 2 02 2 02 2 02 2 02 2	113723 004308 174149 046062 147041	TEAMSTERS LU 485 TEAMSTERS LU 491 TEAMSTERS LU 495 TEAMSTERS LU 496 TEAMSTERS LU 496	PITTSBURCH, PA UNIORITOWN, PA LOS AMCELES, CALF PERTH AMBOY, N J SAINT PROS., MINI	01 01 05 01		
M9441		MEW YORK, N Y PHOENEX, ARLZ NEW YORK, N Y NEW YORK, N Y MINNEAPOLIS, MINN	01 01 01 01	04 01 04 04	02 2 07 2 07 2 02 2 02 2	087704 031563	TEAMSTERS-LU S07 TEAMSTERS-LU S18 & 917 TEAMSTERS-LU S18 TEAMSTERS-LU S36 TEAMSTERS-LU S36	CLEVELAND, ONIO MEW YORK, IN Y MARANCA, IN Y INCTINERSFIELD, COMM RAMSAS CITY, INO	01 01 01 01		20222
953613 216490 437951	TEAMSTERS-LU 293 TLAMSTERS-LU 294 TLAMSTERS-LU 294,295,449,693,810 & 917 TEAMSTERS-LU 295 TLAMSTERS-LU 295	CLEVELARD, OHIO ALBARY, H Y MCW YORK, N Y MAMACA, N Y MAMACA, N Y	01 01 01 01	04 04 04 04	62-2 62-2 02-2 62-2	021211 954705 040074 2777954 030334	TEAMSTERS LU 544 TEAMSTERS LU 550 TEAMSTERS LU 553 TEAMSTERS LU 553 TEAMSTERS LU 557 TEAMSTERS LU 557	MINE APOLIS, MINE MEN YORK, R Y ONAPIA, NEDE DALTMONE, MO			******

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-	Captures Constitute Assessables.	City and State	Per	Captons	Adminis	1 in	Continue, Continue Association	1	1.1	-	1
	Employee Organization or Plan			Control	Adminis Iradia		Employue Organization or Plan	City and State	Pan	Control	Administrative liverships
1419	TEAMSTERS LU 560,617 & 541	JERSEY CITY, N J UNION CITY, N J	01 01	04 03 04	92.2	038230	TEAMSTERS-LU 805 TEAMSTERS-LU 806	NEW YORK, N Y ELMHURST, N Y	01	04	82-2
17447 63109	TEAMSTERS LU S70	BALTIMORE, MD		04	02.2	003926	TEAMSTERS-LU 807	LONG ISLAND CITY, NY	01	04	02-2
16510	TEAMSTERS LU 575	NEWARK, N J	01	01	02 2 02 2	240393	TEAMSTERS-LU 808	WOODSIDE, NY	01	09	02-2
13877	TEAMSTERS-LU 584	NEW YORK, NY	01	01	02.2	004317	TEAMSTERS-LU 812	NEW YORK, II Y	01	04	02-2
	TEAMSTERS-LU 596	PHILADELPHIA, PA SAINT LOUIS, MO	01	03 04 04 09	02-2 02-2 02-2	067444	TEAMSTERS-LU 813 TEAMSTERS-LU 813	NEW YORK, N Y	01	04	62-2
1995	TEAMSTERS-LU 610	SAIRT LOUIS, MO	01 05	04	02.2	165434	TEAMSTERS-LU 814	NEW YORK, N Y	01	63	02-2 02-2
15951	TEAMSTERS-LU 610	SAINT LOUIS, MO	01		02-2	022047	TEAMSTERS-LU 815	ENGLEWOOD CLIFFS, M J	01	04	02.2
11339	TEAMSTERS LU 611	SAINT LOUIS, MO	61	09	02.2	027318	TEAMSTERS-LU 816	NEW YORK, N Y	01	04	02-2
08112	TEAMSTERS-LU 617	MASEY CITY, N J	01	03	02 1 02 2 02 2	222545	TEAMSTERS-LU 816	NEW YORK, N Y	01	03	92-2
11818	TEAMSTERS LU 627 TEAMSTERS LU 643	PEORIA, ILL REW YORK, N Y	01	04	02-7	089925	TEAMSTERS-LU 817 TEAMSTERS-LU 819	NEW YORK, N Y	01	04	02-2
13153	TIAMSTERS LU 645	ROCHESTER, NY	01	03 04 04 09	02.2	251332 015546	TEAMSTERS-LU 820	NEW YORK, N Y	01 01	01	02-2 02-2
	TEAMSTERS LU 660	PERSEY CITY, N J	01	04	02·2 02·2	144123	TEAMSTERS-LU 824	LONG ISLAND CITY, II Y	01	06	02-2
11805	TEAMSTERS LU 680 & 757	NEW YORK, NY	01	04 01	02 2 02 2 02 2 02 2 02 2	186099	TEAMSTERS-LU 830	PHILADELPHIA, PA	01	04	02-2
M236 19685	TEAMSTERS LU 680 TEAMSTERS LU 680	MEWARK, N J MEWARK, N J	01	01	02.2	234218	TEAMSTERS-LU 831	HEW YORK, N Y	01	02	04
79345	TIAMSTERS LU 688	SAINT LOUIS, MO	01	04	02.2	199775	TEAMSTERS-LU 835 TEAMSTERS-LU 837	GARY, PIO PHILADELPHIA, PA	01	04 02 09 03	02-2
PN 37	TEAMSTERS LU 701	MORTH BRUNSWICK, N.J.	ői	09	02-2	243368	TEAMSTERS-LU 840	NEW YORK, N Y	Oi	01	02-2
6327	TEAMSTERS LU 703	OAK PARK, ILL	01	04	02-2	243208	TEAMSTERS-LU 840	NEW YORK, N Y	01	01	02-2
11190	TEAMSTERS LU 704	CHICAGO, R.L.	01	04	02.2	03157	TEAMSTERS LU 843	NEWARK, N J	01	04	02-2
17629 17467	TEAMSTERS LU 705 TEAMSTERS LU 706	CHICAGO, R.L.	01	04 01 04 04	02 Z	135448	TEAMSTERS-LU 852 TEAMSTERS-LU 854	NEW YORK, N Y JAMAICA, N Y	01	04	02-2
	TEAMSTERS LU 707	WOODSIDE, N.Y	01	04	02 2 02 2 02 2	007595	TEAMSTERS-LU 863	HEWARK, N J	01	04	02-2
19278	TEAMSTERS-LU 710	CHICAGO, M.L.	01	04	02.2	145202	TEAMSTERS-LU 868	NEW YORK, N Y	01	02	02-2
72542	TEAMSTERS LU 710	CHICAGO, N.L.	01	04	02 2	148817	TEAMSTERS-LU 875	ELMHURST, NY	01	01	02-2
5492 63475	TEAMSTERS LU 712 TEAMSTERS LU 716	CHICAGO, ILL INDIANAPOLIS, IND	01	04 04 04 04	02.2	245745	TEAMSTERS-LU 876	SALISBURY, MD	01	04	02-2
	TEAMSTERS LU 727	CHICAGO, ILL	01	04	02 2 02 2 02 2 02 2 92 2	251937	TEAMSTERS-LU 921 TEAMSTERS-LU 949	SAN FRANCISCO, CALIF WEST PATERSON, N J	01	04	02-2
HARS	TLANSTERS LU 730	WASHINGTON, 0 C	01	03	02-2	160296	TEAMSTERS-LU 945	MCG. 071000M M I			***
9132	FEAMSTERS LU 731	CHICAGO, B.L.		04	02.2	216287	TEAMSTERS-LU 956	WEST PATERSON, N J KANSAS CITY, NO	- 1	01	02-2
7459 18736	TEAMSTERS LU 731	CHICAGO, R.L.	01	04	02 2 02 2	168448	TEAMSTERS-LU 958	MINNEAPOLIS, MINN		09	02-2
12.50	TEAMSTERS LU 734 TEAMSTERS LU 734	CHICAGO, ILL	01	01	02-2	174035 219459	TEAMSTERS LU 958 TEAMSTERS LU 959	MINNEAPOLIS, MINN ANCHORAGE, ALASKA		09	02-2
			01	91		(1943)	TEAMSTERS-LO 777	ANCHURAGE, ALASAA	•	VI.	42.2
14514	TEAMSTERS LU 738 TEAMSTERS LU 743	CHICAGO, ILL	01	04	02.2	235943	TEAMSTERS-LU 966	NEW YORK, N Y	01	03	02-2
11757	TEAMSTERS LU 744	CHICAGO, ILL CHICAGO, ILL	01 01	03	02.2	209387	TEAMSTERS-LU 968 TEAMSTERS-LU 992	HOUSTON, TEX HAGERSTOWN, MD	91	03 01	02-2
78372	TEAMSTERS LU 744	CHICAGO, R.L.	01	04 .	02 2 02 2 02 2 02 2	206977	TEAMSTERS LU 996	HONOLULU, HAWAII	01	03	02-2
73843	TEAMSTERS LU 753	CHICAGO, ALL	01	04	02.2	188733	TEAMSTERS-LU 996	HOMOLULU, HAWAR	. 01	63	02-2
	TEAMSTERS LU 754 TEAMSTERS LU 761	CHICAGO, R.L.	01	93	02.7	243679	TEAMSTERS-LU 999	NEW YORK, N Y	01	03	02-2
79718	TEAMSTERS LU 76.9	CHICAGO, ILL CORAL GABLES, FLA	41	93	02.2	212495		PATERSON, N J	01	03	92.2
1887	TEAMSTERS-LU 777	CHICAGO, ILL	01	03 04 04	02 2 02 1 02 2 02 2	201135 245225		NEW YORK, N Y BRIDGEPORT, COMM	01	03	02-2 02-2
11657	TEAMSTERS LU 782	MAYWOOD, R.L	ői	04	02 2	238887		BROOKLYN, N Y	ői	03	02-2
	TEAMSTERS LU 786	CHICAGO, ILL	01	03	02.2	054891		BROOKLYN, N Y	01	04	02.2
	TEAMSTERS LU 786 TEAMSTERS LU 787	CHICAGO, R.L.	01	04	02-2	080576		MILWAUKEE, WIS	01	04	02-2
1222	TEAMSTERS LU 802	LONG ISLAND CITY, N Y	01	04	02-2 02-2 02-2 02-2	065532		WASHINGTON, D.C., METHLEN, MASS	01 01	04	02-2
13132	TEAMSTERS LU 804	LONG ISLAND CITY, N Y	01	04	02.2	074548	PEAMSTERS NEW YORK STATE CONFERENCE	UTICA, N Y	ěi	04	02.2

	Employee, Employer Association. Employee Organization or Phon	City and State	Pas	Employees Covered	Adminis- tratar	fin in	Employer, Employer Association, Employer Organization or Phys	City and State	~	Employees Comment	*
i	TEAMSTERS-PHILADELPHIA & VICINITY	PHILADELPHIA, PA	01	04 03 84 04	02-2		TEER, NELLO L COMPANY	DURHAM, N.C.	02	01	
4	TEMISTERS-PHILADELPHIA & VICINITY	PHILADELPHIA, PA	01	0.3	02-2	183608	TEION RANCH COMPANY	BAKERSFIELD, CALIF	01	01	
1	TEMISTERS-RICHMORD	RICHMOND, VA	01	04	02-2	181103		BAKERSFIELD, CALIF	02	01	-
i	TEAMSTERS-SAINT LOUIS BREWERY	SAINT LOUIS, MO	01	04	02-2	166334		STRATFORD, COM	03	01	-
	TEAMSTERS-SOUTHERN CONFERENCE	DALLAS, TEX	01	01	82-2	135556	TEX BEARING COMPANY INCORPORATED	STRATFORD, COM	62	01	•
i	TEAMSTERS SUBURBAN NORTH ILLINOIS	ELGIN, ILL	05	04 04 04	02-2	164072	The second secon	STRAIFORD, COM	02	01	
	TEAMSTERS MAREHOUSE INDUSTRY PORT OF MY	NEW YORK, N Y	01	04	02-2	198153		ROCKTON, ILL	92	01	
	TEAMSTERS-WESTERN CONFERENCE	SEATTLE, WASH	91	04	02-2		TENNI-CRAFT INCORPORATED	ROCKTON, NLL	01	01	
	TEAMSTERS-WESTERM CONFERENCE TECH WELD CORPORATION	SEATTLE, WASH BURLINGTON, MASS	01	03 01	02-2	229958 050145		PARTUCKET, R I BEAVERTON, OREGON	01 02	02 01	
		******		**		039451	TEL E LEPT MAGNIFTE INCOMMENTER	-			
ļ		MORRISTOWN, N )	93	03	01	041643		MINIEAPOLIS, MINI	02 02 01	83	
	TECHALLOY COMPANY INCORPORATED	RAHRS, PA		92	01	030202		LOS ANGELES, CALF	82	93 97	
1	TECHALLOY COMPANY INCORPORATED	RAHRS, PA RAHRS, PA	01	03	01	229170		CAMOEN, N. J.	82	01	7
	TECHALLOY COMPANY INCORPORATED TECHALLOY CALFORNIA INCORPORATED	CITY OF INDUSTRY, CALIF	01	03 02 02 03 03	01		TELE-SIGNAL CORPORATION	HICKSVILLE, III Y	82	62	
	TECHALLOY-ALIMOIS INCORPORATED	TINION NT	01	03	01	229173	TELE-SIGNAL CORPORATION	LONG ISLAND CITY, NY	01	03	-
i	TECHERT, A & SON INCORPORATED	SACRAMENTO, CALIF	02	03 07	01	248232		OAK RIDGE, TEM	01	01	
	TECHNI-BRAZE INCORPORATED	SARTA FE SPRINGS, CALIF	02	01	01	250283		MASHINGTON, PA	01	02	
	TECHNICAL APPLIANCE CORPORATION	PHELADELPHIA, PA	01	95	01		TELEDYNE COMPANY	CARLAND, TEX	01	02 01	- (
=	TECHNICAL APPLIANCE CORPORATION	PHILADELPHIA, PA	01	05	01	006715		TROY, N Y	01	04	
	TECHNICAL OIL TOOL CORPORATION	LOS ANGELES, CALIF	02	01	01 .	227870	TELEDYNE INCORPORATED	LOS ANGELES, CALIF	01	02	
1	TECHNICAL OPERATIONS INCORPORATED	BURLINGTON, MASS	02	01	01	227891	TELEDYNE INCORPORATED	LOS ANGELES, CALIF	01	83	
Ì	TECHNICAL OPERATIONS INCORPORATED	BURLINGTON, MASS	01	01	01	094972		NORTH TORAWANDA, II Y	82	01	
١	TECHNICAL PUBLISHING COMPANY	BARRINGTON, ILL	01	01	01	237447		SOLAMA BEACH, CALIF	02	01	
,	TECHNICAL BURBER COMPANY INCORPORATED	JOHNSTOWN, OHIO	02	01	01	250282	TELEDYNE MOVABLE OFFSHORE	LAFAYETTE, LA	82	01	
	TECHNICAL TAPE CORPORATION	NEW ROCHELLE, NY	01	03	01	001595	The state of the s	SAN DEGO, CALIF	01	63 62 63 62	1
	TECHNICAL WIRE PRODUCTS INCORPORATED	CRAMFORD, M J	02	01	01	001612		SAN DIEGO, CALIF	82	82	
	TECHNICARSON COMPANY INCORPORATED	HOLYOKE, MASS	01	01	01		TELEDYNE VASCO	LATROBE, PA	01	03	
	TECHNICOLOR CORPORATION	HOLLYWOOD, CALIF	01	01	01	184268		LATROBE, PA	84	62	
	TECHNICON INSTRUMENTS CORPORATION	TARRYTOWN, N Y	02	01	- 01	181742	TELEFLEX INCOMPORATED	MORTH WALES, PA	- 1		
	TECHNICAAT LABORATORIES INCORPORATED	THOMASTON, COMM	02	01	01	216793		MORTH WALES, PA	01	82 83	
!	The state of the s	DAYTON, OHIO	01	01 01	01	251894		MORTH WALES, PA	91	63	
7	The second second second	BUFFALO, NY	01	01	01	117243		CARDEN CITY, KARS	62	01 01	
		TECUMSEN, MICH TECUMSEN, MICH	01 01	63 63	01		TELEGRAM-TRIBUNE COMPANY TELEGRAPH HERALD	SAM DIEGO, CALIF DUBUGUE, NOMA	82	01	
	TECUMSEN PRODUCTS COMPANY	TECHNOCO MICH		43		251164	TELEGRAPH PRESS	HARRISBURG, PA	01	63	
i		TECUMSEN, MICH	01	03	01		TELEGRAPH PRESS	HARRISBURG, PA	01	82	
į		TECHNISEH, MICH	01	06	01	147219	The state of the s	MASHUA N N	41	01 01	
í	The state of the s	TECUMSEH, MICH Tecumseh, Mich	01	03 06 06 04	01	024048		SELVER SPRING, MD	Al	-	
5		TECUMSEN, MICH	01	67	01		TELEVILEW PRODUCTIONS INCORPORATED	SANTA MONICA, CALF	62	01	
ı	TECHNISEN PRODUCTS COMPANY	TECUMSEH, MICH	01	04	01	210647	TELEMET CO DIV THE HAMMARLUND MFG CO INC	AMITYVILLE, IL Y	81	42	
	TECHNISEN PRODUCTS COMPANY	TECUMSEN, MICH	01	06 06	01		TELEPHONE & DATA SYSTEMS INCORPORATED	CHICAGO, ELL	01	01	
ı	TECHNISEN PRODUCTS COMPANY-MARYON DRV	TECUMSEN, MICH	01		01		TELEPHONE UTILITIES INCORPORATED	ILIHACO, WASH	01	01	- 1
9	TEE PINE INCORPORATED	CHICAGO, ILL	01	82	01		TELEPHONE UTILITIES OF PA INC	EXPORT, PA	01	01	
5	TEE-PAN INCORPORATED	CHICAGO, ELL	01	63	01		TELESCOPE FOLDING FURNITURE COMPANY	GAMPIELE, NY	01	•	-
	TEE-PMA INCORPORATED	CHICAGO, ILL	01	04	02-1		TELESCOPE FOLDING FURNITURE COMPANY	GRANNELE, NY	01	82	
Ц	TEE-PM MCORPORATED	CHICAGO, ILL	01	02	01		TELETYPE COMPORATION	SHOKE, ILL	.01	01	1
ă	TEE-PAK INCORPORATED	CHICAGO, ILL	01	04 02 03	01	199719	TELEVISION COMMUNICATIONS CORPORATION	MEM ACURY IN A	01	01	1
N	TEER WICHINGE & COMPANY TEER WICHINGE & COMPANY	MCKSON, MICH	01	01	01	168150	TELEVISION MANUFACTURERS OF AMERICA CO	WHEELING, ULL		62	
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# United States Court of Appeals

No. 76-1855 JOHN DANIEL,

Plaintiff-Appellee,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, et al.,

Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 74 C 2865—Alfred Y. Kirkland, Judge.

HEARD APRIL 4, 1977-DECIDED AUGUST 20, 1977

Before CUMMINGS and TONE, Circuit Judges, and JAMESON, Senior District Judge.\*

CUMMINGS, Circuit Judge. Plaintiff is a resident of Illinois and has been a member of defendant Local Union 705 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America since 1951. He also purports to serve as the representative of the class of all members of all affiliate locals of the Teamsters International who have "purchased and acquired an interest in a Teamsters' pension fund." The

<sup>\*</sup> The Honorable William J. Jameson, Senior District Judge of the District of Montana, is sitting by designation.

original defendants were Local 705, the International Brotherhood, three classes (Teamster local unions with pension funds similarly situated to Local 705, trustees of such pension funds and all officers of locals with such pension funds), and Louis Peick, an officer of Local 705 and a trustee of its pension fund. Additional defendants added by amendment are Local 705's Pension Fund and seven individuals representing that pension fund and all other Teamster pension funds.

According to the complaint, the Teamsters locals negotiate labor contracts with companies across the United States for the benefit of their members who are employees of such companies. Under these contracts, Teamster members agree to provide their services as employees of the companies in return for wages and various other forms of consideration. Since 1955, most of those labor contracts negotiated by the Teamsters have provided for the establishment of pension funds for their union members. Under the labor contracts, the employing companies make set payments into the pension funds for Teamster members "as part consideration for the labor services provided by such union members." (Complaint par. 12) These payments are held in trust and invested by pension trust fund trustees who are equally divided between employer and union representatives. Therefore, the Teamster member employees contribute their labor services in return for their participating interest in the pension trust funds and their wages and fringe benefits.

Again, according to the complaint, the Teamsters pension plans do not differ inter se in any material respect for the purposes of this case. Each was a defined benefit pension plan where employees are offered various benefits if they meet certain eligibility requirements. Actuarial assumptions based on estimated union member turnover, mortality and the rate of return on fund capital are used to determine the amount the employer must contribute so that the pension fund will be able to pay the promised benefits to union members as they retire without jeopardizing the payment of benefits to future and antecedent retirees. The pension trust funds have lengthy vesting periods. If a Teamster

member does not meet the length of service requirement of the vesting period, the entire contribution paid into the trust fund for him is forfeited, thereby extinguishing his interest in the fund. Local 705's pension fund had a twenty-year vesting period, a typical provision.

In addition to the lengthy plan-vesting periods, most of the Teamsters pension plans require continuity of employment with employers who have entered into labor contracts with the Teamsters. Under this continuity or "break-in-service" rule, no pension benefit is available to a Teamster union member who has been employed by covered employers for the full vesting period but whose employment with covered employers is not continuous and uninterrupted. Employer-paid contributions are also forfeited when the union member cannot meet the break-in-service requirement of his pension plan's vesting rule.

The monies contributed to the pension funds are invested by the trustees thereof, and it is alleged that each trust fund "over the long run [is] reasonably expected to grow through the accumulation of dividends, interest and other earnings." (Complaint par. 15) Failure to meet the length or continuity requirements of the pension fund's vesting provision also causes the forfeiture of a union member's participating interest in these accumulated earnings. When the complaint was filed in 1974, plaintiff had worked for covered employers for 22½ years, but his service was interrupted by an involuntary four-month break in service from December

A survey of 32 pension plans representing over half of the Teamster membership disclosed no other plan which would have absolutely disqualified a man in Daniel's circumstances. Most plans have continuity requirements but involuntary breaks in service are usually remediable upon satisfaction of certain requirements. Local 705's continuity requirement has been so modified for a break in service occurring after 1970 (International Br. at 9 n. 12).

1960 to April 1961.<sup>2</sup> Because of this interruption in service, Local 705 has refused to pay plaintiff any pension benefits whatsoever and the employer contributions paid on his behalf and the earnings accumulated therefrom have been forfeited.

Count I of the complaint asserts that beginning in 1955 and continuing to the present, defendants misrepresented certain material facts and omitted to make other material facts by making misleading statements which in general related to the value of a member's participating interest in his local pension fund. The misrepresentations concerned misleading statements as to the length and continuity requirements of the pension plan's vesting provision. Defendants are said to have made omissions of material facts by failing to inform the members that they would receive no pension benefits whatsoever if they did not meet the length or continuity requirements of the vesting provision and that, upon failing to satisfy these requirements, the contributions made on their behalf into the fund and the earnings accumulated therefrom would be forfeited. Defendants allegedly also omitted to state that the fund's actuarial basis was arbitrary. Other omissions are said to be the failure to disclose pertinent information needed to disclose the actuarial basis upon which the funds were grounded and the actuarial likelihood that a union member will not receive any pension benefits at all. Finally, plaintiff alleged a failure to state that the defendants have unlawfully diverted pension funds for the benefit of persons other than the pension trust beneficiaries.

Plaintiff claims in Count I that although he purchased an interest in the pension fund by providing labor service to an employer with a labor contract with the Teamsters, he sustained substantial losses which were a direct and proximate result of a violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder by the defendants. Besides requesting class relief, plaintiff requested the district court to find that defendants violated Section 10(b) and Rule 10b-5 and to reform the pension fund agreements by deleting the length and continuity requirements of the vesting provision. The plaintiff also sought a judgment requiring defendants to pay pension benefits unlawfully withheld from plaintiff and his class. In addition, a judgment was sought in the amount of any interests which had been diverted from their proper purposes.

Count II of the complaint sought similar relief under Section 17(a) of the Securities Act of 1933. However, neither this nor any other count of the complaint charged that the registration requirements of that Act were applicable.<sup>3</sup>

## Plaintiff's Affidavit

Four months after the docketing of his complaint, plaintiff filed an affidavit which we treat as part of the pleadings for purposes of our review of the order below denying the motion to dismiss. The affidavit showed that he had only an elementary school education and had joined Local 705 in April 1950 when he became a truck driver with an employer who had a collective bargaining agreement with that Union. He worked continuously as a truck driver with Local 705 contracting employers from April 1950 through November 1973, except for an interruption from December 5, 1960, until April 1961, when he was involuntarily laid off wholly because of the

According to plaintiff's supporting affidavit, from April 1961 to July 5, 1961, his employer's bookkeeper embezzled the employer's contributions to the Local 705 Pension Fund. Plaintiff reported this embezzlement to Local 705. It subsequently treated his break in service as a seven-month interruption, although it had assured him at the time of his report to it about the lapse vis-à-vis his pension rights that it "would take care of whatever had to be done on account of the embezzlement." (App. 95a)

The original complaint contained three additional counts, and a fourth was added by amendment on February 7, 1975. The plaintiff thereby seeks relief for the defendants' alleged breach of their duty of fair representation under Section 9(a) of the National Labor Relations Act ("NLRA"), 29 U.S.C. 159(a), and for the failure of the pension fund to be established for the "sole and exclusive benefit of the employees," as required by Section 302(c)(5) of the NLRA, 29 U.S.C. 186(c)(5). Finally, the plaintiff seeks to recover under common law theories of breach of fiduciary duty, fraud and deceit. Since they are not involved in this appeal, the additional counts will not be discussed further herein.

adverse economic condition of his employer.4 Plaintiff tried unsuccessfully to find any trucker's work during this time period. He retired because of cataracts on December 1, 1973, at the age of 63. Since his retirement, Daniel has not worked at all.

In 1955, plaintiff learned of Local 705's pension fund and understood that as a Local 705 member he would be eligible to receive retirement benefits upon completing 20 years of employment with Local 705 covered employers. He believed that employer contributions to the Local 705 pension fund would finance the retirement payments which he would receive after 20 years of employment. This retirement plan was a material factor in his continuing employment with Local 705 covered employers. If he had known that Local 705 would interpret the pension plan as requiring uninterrupted service of 20 years, he would have sought employment elsewhere with an adequate retirement plan. The communications he received from Local 705 did not disturb his understanding that he would receive a pension after 20 years of employment with covered employers.8

See note 2 supra.

Pension plan booklets describing pension plans are often designed "to sell the plan \* \* \* " D. McGill, Fulfilling Pension Expectations 17 (1962) (Institute for Public Interest Representation's Br. at 12). For example, these materials do not forthrightly disclose in terms understandable to a truck driver with a limited education the

"minimum length of time considered to constitute a breakin-service in the Local 705 Pension Fund 20 years continuous service vesting rule; such materials do not disclose that all contributions made on behalf of a Local 705 member into the Local 705 Pension Fund (and all accumulated earnings on the aggregate of such con-tributions) will be forfeited following any proscribed break in service; and such materials do not disclose either the actuarial bases on which the Local 705 Pension Fund has been established or the likelihood that any Local 705 member will ever receive a pension benefit." (Pl. Br. at 5)

Indeed, one amicus siding with defendants admits that this lack of disclosure is rampant generally in the pension field:

"Thus employees are often not aware of the fact that the actual realization of benefits depends upon meeting certain benefit eligibility conditions, depends upon prudent management of the retirement fund, depends upon contributions by their employer sufficient to pay retirement benefits as they come due, and depends upon their employer remaining in business." (Erisa Regulations Industry Committee's Br. at 19-20).

In June 1971, plaintiff received a letter from defendant Peick stating that after 20 years of covered service and at 60 years of age or over, a retired employee would receive a monthly pension of \$400. He expected to receive such a pension on his retirement. One of Local 705's booklets advised him that the purpose of the pension fund was to take care of him and his femily in case of retirement and that the funds afforded protection to him, his wife and unmarried children under 18 years of age. He relied on such assurances that the fund would provide for financial security in his old age.

He did not learn until December 1973 that his involuntary 4-month layoff caused the Draconian result of total forfeiture of his pension. He never learned of the success or failure of the trustees' management of the Local 705 pension fund, nor was he advised of the type of investments being made by the trust fund. During several months prior to this December 1, 1973, retirement, he visited Local 705's office on five to eight occasions to arrange for his pension and was not then advised that he was ineligible to receive it. After Daniel's retirement, he was told for the first time that his 4month involuntary break in service made him ineligible to receive any pension benefits. On December 26, 1973, and on March 28, 1974, he appeared before the Local 705 trustees, but they refused to reverse the prior denial of his pension. He and his fellow Local 705 members had always had the common understanding that they would receive a retirement benefit after 20 years of covered employment and that no employer contributions could be forfeited. Other members of Local 705 were shocked to learn that a Local 705 member with Daniel's record of employment could be denied all pension benefits because of a temporary break in service. Indeed neither the defendants nor the amici who support their position dispute that this is "unfair in the extreme, shocking to the conscience" (Secretary of Labor's Br. at 21).

Local 705, Peick and the International Brotherhood of Teamsters filed motions to dismiss Counts I and II of the complaint on the ground that the court lacked subjectmatter jurisdiction and that they failed to state a claim

upon which relief could be granted.6 Local 705 and Peick also maintained that the action under Counts I and II was barred by the limitations provisions of the Securities Act of 1933 and the Illinois Statute of Limitations.7 On March 1, 1976, the district judge handed down a memorandum opinion and order denying the motions to dismiss as to all counts and holding the antifraud provisions of the securities laws applicable. This opinion is reported in 410 F.Supp. 541. The effect of the opinion is to require defendants, when offering a defined pension plan to a member, to disclose the actuarial probability, here perhaps as low as 8% (410 F.Supp. at 551), that a member actually will receive pension benefits, and factors such as risk of loss, breaks in service, death before retirement age, and plan termination, that can cause this member to be deprived of his benefits, or otherwise defendants must face fraud liability under the securities acts. Subsequently, the court entered an order denying defendants' motions to reconsider its refusal to dismiss Counts I and II but certified their application for interlocutory appeal under 28 U.S.C. § 1292(b). The certification was limited to Counts and II of the complaint. The controlling question of law certified to this Court can be easily identified by the district court's careful circumscription of its holding below with respect to Counts I and II, viz.:

"The Court makes no finding here beyond the narrow holding that the complaint alleges the sale of a security for purposes of application of the antifraud provisions of the Securities Acts, and that the complaint alleges violations of those provisions. The Court makes no finding with respect to applicability of any other sections of those Acts to employee pension plans such as the one here litigated." 410 F. Supp. at 553.

Thereafter we granted permission to appeal.8 Three amici curiae have filed briefs urging reversal and four urge affirmance.9 We affirm.

## Modality of Analysis

The securities cases in the Supreme Court's 1976 October Term have underscored its recently expressed methodology in interpreting the securities laws. See e.g., Piper v. Chris-Craft Industries, Inc., 45 LW 4182; Santa Fe Industries, Inc. v. Green, 45 LW 4317. Analysis begins with the relevant statutes themselves. After a study of their language and any court-added gloss, attention shifts to the statutes' legislative history. Additional considerations weigh in the balance. The history of the SEC's administration of the securities laws often can add a substantive gloss of its own which is entitled to the usual administrative deference (Investment Company Inst. v. Camp, 401 U.S. 617, 626-627) so long as it does not become law-making. Ernst & Ernst v. Hochfelder, 425 U.S. 185, 212-214. And to the extent that these more cogent interpretive tools are not dispositive of the statutes' meaning, additional considerations of policy may tip the scales. Id. at 214 n. 33. Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 737. We shall use this methodology in our analysis of this case.

#### **Statutes**

Both of the major anti-fraud portions of the federal securities laws are relied upon in this complaint. Count I charges a breach of Section 10b of the Securities Ex-

Local 705 and Peick included additional defenses in their motion to dismiss as to Counts I and II as well as some defenses directed at the other Counts of the complaint. The International answered the complaint and subsequently filed a motion to dismiss Counts I and II only, based on an asserted lack of subject-matter jurisdiction and failure to state a claim.

On appeal, the limitations defense has been abandoned.

<sup>8</sup> The district court has not yet ruled upon plaintiff's and defendants' respective motions for class action certification.

Those favoring affirmance are the Securities and Exchange Commission (SEC), the Gray Panthers, the Institute for Public Interest Representation (IPIR) and the Teamsters for a Democratic Union. Opposed are the Secretary of Labor, the Erisa Regulations Industry Committee (ERIC) and the National Coordinating Committee for Multiemployer Plans. The General Counsel of the SEC and a representative of the Secretary of Labor participated in the oral argument.

change Act of 1934 (15 U.S.C. § 77j(b))10 and Rule 10b-5 thereunder (17 C.F.R. § 240.10(b)-5)11 while Count II alleges a violation of Section 17(a) of the Securities Act of 1933 (15 U.S.C. § 77q(a)).12 This being an appeal from

10 Section 10b provides:

"It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any

national securities exchange-

"(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors."

11 Rule 10b-5 provides:

"It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange.

(1) to employ any device, scheme, or artifice to

defraud.

(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase

or sale of any security.'

Section 17(a) provides: "It shall be unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly-

(1) to employ any device, scheme, or artifice to

defraud, or

(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud

or deceit upon the purchaser."

an order denying a motion to dismiss, the allegations concerning the use of the jurisdictional means and the making of material misrepresentations, the omissions to state material facts or the use of manipulative or fraudulent devices are treated as true by defendants. Their argument is based upon the phrase "in connection with the purchase or sale of any security" in Section 10b and Rule 10b-5 and the phrase "sale of any securities" in Section 17(a). Defendants assert that these anti-fraud provisions are inapplicable on their face on the ground that plaintiff's interest in the pension fund is not a "security" and was not acquired by him in a "sale."

Plaintiff's Interest in the Pension Fund Is a "Security"

The term "security" is defined in Section 2(1) of the 1933 Act (15 U.S.C. § 77b(1))13 and in Section 3(a)(10) of the 1934 Act (15 U.S.C. § 78c(a)(10)).14 In each statute, the definition of "security" includes any "investment con-

Section 2(1) of the 1933 Act provides:

"When used in this title, unless the context otherwise

requires-

"When used in this title, unless the context otherwise

(10) The term 'security' means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or

(Footnote continued on following page)

<sup>(1)</sup> the term 'security' means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a 'security,' or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing." (Emphasis supplied.) <sup>14</sup> Section 3(a)(10) of the 1934 Act provides:

tract."<sup>15</sup> Since the same Congress which passed both the 1933 and 1934 Acts clearly indicated that its definition of "security" in the 1934 Act was intended to be "'substantially the same \* \* \*" as in the 1933 Act, cases construing either definition can be used interchangeably. United Housing Foundation, Inc. v. Forman, 421 U.S. 837, 847 n. 12; Tcherepnin v. Knight, 389 U.S. 332, 336, 342. Therefore we need not break out separate lines of analysis in order to determine the existence of a security under Section 10b of the 1934 Act and Section 17(a) of the 1933 Act.

In construing the statutory term "security," guidance is provided by two overriding principles. First, as remedial legislation the securities acts should be construed broadly to effectuate their purposes. Congress purposely defined the term "security" broadly, and it has been construed liberally by the Supreme Court in order to protect the public from speculative or fraudulent schemes. Tcherepnin v. Knight, 389 U.S. 332, 336, 338. Secondly, in searching for content in the term "security," "form should be disregarded for substance and the emphasis should be on economic reality." Id. at 336.

subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit, for a security, or in general, any instrument commonly known as a 'security' or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing; but shall not include currency or any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited." (Emphasis supplied.)

Plaintiff does not seriously press the theory that he had a "certificate of interest or participation in any profit-sharing agreement" but rather relies on the "investment contract" theory. Since we find merit in the "investment contract" theory, we have no occasion to express a view on the adequacy of the "certificate" theory under the facts of this case where Daniel has no document which evidences his interest in the Local 705 Pension Fund.

With this background, attention can now focus on whether plaintiff's interest in the Teamsters' pension fund is an investment contract. An investment contract was defined by the Supreme Court in SEC v. W. J. Howey Company, 328 U.S. 293, 298-299, to mean

"a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, it being immaterial whether the shares in the enterprise are evidenced by formal certificates or by nominal interests in the physical assets employed in the enterprise."

In United Housing Foundation, Inc. v. Forman, 421 U.S. 837, 852, the Supreme Court reiterated this rule and stated that

"[t]his test, in short-hand form, embodies the essential attributes that run through all the Courts' decisions defining a security. The touchstone is the presence of an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others."

"What distinguishes a security transaction [from every other form of commercial dealing] is an investment where one parts with his money in the hope of receiving profits from the efforts of others, and not where he purchases a commodity for personal consumption or living quarters for personal use." Id. at 858. As demonstrated below, the elements of the Howey rule are present here, for under the Local 705 Pension Fund, money is invested in a common enterprise, the management of which is committed to a third party, and from which profits and income are reasonably expected.

The International's argument that a union member is not an investor "in any sense understood by Congress when it was protecting investors in the securities markets" (Br. 12) is addressed infra.

The Union Member as an Investor

In the present case, the money invested in the pension fund came from employer contributions paid on behalf of the employee. The local defendants maintain that noncontributing beneficiaries of a fund cannot be conceptualized as investing in the fund, citing SIPC and SEC v. Morgan, Kennedy & Cox, Inc., 533 F.2d 1314 (2d Cir. 1976). In Morgan, Kennedy, the Second Circuit was asked "to determine whether the one hundred and eight employee beneficiaries of a trust created under a profitsharing plan qualify as 'customers' of a bankrupt broker-dealer for the purpose of receiving compensation for losses available to such customers under the Securities Investor Protection Act of 1970 (SIPA), 15 U.S.C. § 78aaa et seq." Id. at 1315. The statutory definition of "customer" read in pertinent part "persons (including persons with whom the debtor deals as principal or agent) who have claims on account of securities received, acquired or held by the debtor from or for the account of such persons \* \* \*" (emphasis supplied). Id. at 1316. Prior Second Circuit law had used investor and customer status interchangeably. Id. at 1317. In Morgan, Kennedy it was the trust as an entity as represented by the trustees, rather than its beneficiaries, who were the customers of the debtor broker-dealer. The account was held in the trustees' names and the individual beneficiaries' identities were totally unknown to the broker-dealer. Moreover, control over investment decisions was exercised exclusively by the trustees. "The employee-beneficiaries \* \* \* made no purchases, transacted no business, and had no dealings whatsoever with the broker-dealer in question respecting the trust account." Id. at 1318. Common sense mandated the conclusion that the individual beneficiaries were not customers of the broker-dealer. Because of the sui generis definition of customer/investor under the Securities Investor Protection Act of 1970, Morgan, Kennedy is irrelevant to the question whether the union members have made an investment in the meaning of the 1933 and 1934 Acts.

More relevant is the recent case of Klamberg v. Roth, [76-77 Transfer Binder] CCH Fed. Sec. L.Rep. ¶ 95,-747 (S.D. N.Y. 1976). There the court held that the

plaintiff as beneficiary in an employee pension plan had standing to bring an anti-fraud action against the plan trustees:

"Fraud perpetrated by a trustee in the purchase or sale of securities on behalf of the trust has a tangible impact on each beneficiary, no matter how many beneficiaries are thereby affected and regardless of the precise purposes of the trust. The policies behind the *Birnbaum* rule are not undermined \* \* \*" *Id.* at 90,630,17

The employer contributions to the plan's pension fund constitute a sector of the total employee compensation structure. Inland Steel Co. v. National Labor Relations Board, 170 F.2d 247 (7th Cir. 1948), certiorari denied, 336 U.S. 960. "Regardless of the form they take, the employer's share of the cost of these plans or the benefits the employers provide are a form of compensation." Welfare and Pension Plans Disclosure Act of 1958, S.Rep. No. 1440, 85th Cong., 2d Sess. (1958), reprinted in 3 U.S. Code Cong. and Admin. News 4137, 4139. This thesis is accepted by the courts, see, e.g., Lewis v. Benedict Coal Co., 311 U.S. 459, 469; Employing Plasterers' Assoc. v. Journeymen Plasterers' Protective and Benevolent Soc'y, 279 F.2d 92, 99 (7th Cir. 1960), and the commentators alike. P. Drucker, The Unseen Revolution 8, 34 (1976); Note, Legal Problems of Private Pension Plans, 70 Harv. L. Rev. 490, 494 (1957). Indeed the International Brotherhood has conceded18 these pension funds "constitute a form of compensation for an employee's

Birnbaum v. Newport Steel Corp., 193 F.2d 461 (2d Cir. 1952), certiorari denied, 343 U.S. 956, confined recoveries under Section 10b of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder to buyers and sellers of securities.

In the district court, the International Brotherhood did not challenge that an "investment contract" was involved here. Even now all the defendants agree that "the SEC has consistently taken the position that interests in some pension plans are "securities" (Joint Rep. Br. at 2).

labor" (Br. 12). 19 Realistically speaking, employees are putting money into a fund for an employee's future use which he would otherwise be getting in his paycheck. Mundheim and Henderson, Applicability of the Federal Securities Laws to Pension and Profit-Sharing Plans, 29 Law & Contemp. Prob. 795, 803-804 (1964).

The International maintains that employees do not even have an interest in the pension plan except in the attenuated sense that they have a contingent expectancy of receiving pension payments at a future date. But mere contingent expectancies are the rule rather than the exception in the equity markets. Profits in an equity security require that the market value plus accrued dividends of a stock be greater than the stockholder's cash basis. Thus profits are contingent on the successful operation of the common enterprise, there the issuing corporation. Whether an employee is found to have covered employment before his benefits vest or a stockholder is forced to sell his stock at a net loss does not eject his interest in the respective common enterprises from the bounds of the Howey definition of security. Realizing this analogy is not exact, we think that a right to receive benefits, received as a form of compensation and not subject to unilateral withdrawal by the pension trustee or the employer, is a sufficient interest to constitute a security, even though it will only mature upon the happening of certain events in the future.

The Local defendants attempt to erect a dichotomy between wages per se and the fringe benefits of employment which together make up an employee's total compensation by referring to sections of the Bankruptcy Act, the Internal Revenue Code, the Social Security Act, the Fair Labor Standards Act and the Sherman Act which purportedly raise such a distinction for the pur-

poses of those Acts. The existence of a wage/compensation dichotomy in other unrelated statutes is wholly irrelevant to whether a union member has made an investment under the *Howey* rule. The *Howey* test only requires that the employer-paid contributions to the pension fund can be properly considered to be economic compensation to the employee. This proposition is universally accepted by the courts and commentators. Accodingly, the investment of money prong of the *Howey* rule has been satisfied.<sup>20</sup>

## The Pension Fund as a Common Enterprise

Under Howey, it is "immaterial whether the shares in the enterprise are evidenced by formal certificates or by nominal interests in the physical assets employed in the enterprise." 328 U.S. at 299. As a result, the common enterprise can properly take the form of a trust fund investing in the capital markets where the beneficiaries common relationship with the enterprise is an undivided interest in such a trust without the beneficiaries having certificates evidencing their interest or the power to transfer their interests in the trust. See Collins v. Rukin, 342 F.Supp. 1282, 1286 (D. Mass. 1972). Presumably, an investor who purchases a minority block of stock from a close corporation whose shares have restraints on their alienation may still sue for fraud under the securities laws. Holdsworth v. Strong, 545 F.2d 687 (10th Cir. 1976) (en banc) Here the enterprise is common to all of the Local 705 members. The pension fund trustees selfadmittedly exercise exclusive control over the common enterprise and the investment of its assets. The pension fund which receives the union members' investments is a common enterprise under Howey.

The International Brotherhood argues that the employee, once employed, has no individual control over either the fact or amount of the contributions to the fund. Such issues of investment autonomy are best addressed in the context of the existence of a sale. Consequently we defer the bulk of our discussion on these issues until our discussion of whether a sale of an instrument found to be a security can be said to have occurred.

The International makes the overly facile analogy to Forman, supra, that just as the "shareholders" in Forman decided whether to live in a particular place, the union members made the decision whether to work for a Teamster shop. It is clear that the union member does not intend to purchase a commodity or realty for personal use; rather he parts with his money in the hope it, through the management of others, can fund his retirement.

Profits from the Efforts of Others

The Local defendants point principally to United Housing Foundation v. Forman, 421 U.S. 837, in arguing that the pension fund does not generate profits in the Howey sense.<sup>21</sup> In Forman, profits were defined as follows:

"By profits, the Court has meant either capital appreciation resulting from the development of the initial investment, as in Joiner [320 U.S. 344] (sale of oil leases conditioned on promoters' agreement to drill exploratory well), or a participation in earnings resulting from the use of investors' funds, as in Tcherepnin v. Knight, supra (dividends on the investment based on savings and loan association's profits). In such cases the investor is 'attracted solely by the prospects of a return' on his investment. Howey, supra, at 300." Id. at 852.

It is conceded that the expected payout to a beneficiary will exceed the contributions made by the employer on the employee's behalf (the union member's investment). The resulting gain would commonly be termed a profit. Black's Law Dictionary. However, the Local defendants attempt to discredit this gain as a Forman "profit" because, on an amortized basis, some of the gain may be attributable to "pooled" contributions of all participating employers, forfeitures of employees whose pension rights do not vest or to increased contributions negotiated by the union.

Initially it may be noted that gain relative to a security can derive from sources other than the direct efforts of the managers of the common enterprise. In both SEC v. Koscot Interplanetary, Inc., 497 F.2d 473 (5th Cir. 1974), and SEC v. Glenn W. Turner Enterprises, Inc., 474 F.2d 476 (9th Cir. 1973), certiorari denied, 414 U.S. 821, the gain present for any particular investor in those pyramid sales schemes had as its source a substantial fraction of the investment of another investor in the scheme. Similarly, the payout to a maturing annuitant in SEC v. Variable Annuity Life Ins. Co., 359 U.S. 65,

was more likely to derive from investments of new annuitants than from a return on his original investment and the compounded income earned on it. Moreover, realizing a profit from a non-transferable stock option given in exchange for services would depend upon the investor having enough money to exercise the option. Collins v. Rukin, 342 F.Supp. 1282 (D. Mass. 1972). Yet in all of these cases the investor's interest was still characterized as a security.

In any event, only a portion of the gain can even arguably derive from non-investment sources. A substantial part of the gain (which even defendants concede to be at least 25%, International Br. at 10-11) will derive from traditional return on the pension fund participant's investment, a dollar-profit element in the form of capital gains, interest, dividends, and other accumulated earnings realized from the trustees' management of the pension fund.23 For example, the current weekly contribution to the Local 705 pension fund of \$24 invested at the current maximum bank interest rate of 7½ percent per annum on a compounded basis generates a substantial sum of money. At this rate, over a 20-year career, almost \$25,000 is invested and if earnings are accumulated on a tax-deferred basis pursuant to Section 401 of the Internal Revenue Code (26 U.S.C. § 401), the profit over capital contribution will be over \$33,000. An increase of 1% in return on a pension fund's capital can allow benefits to be increased by 20% (SEC Br. at 11). It is precisely this promise of retirement benefits far in ex-

Defendants do not contest that whatever is expected from the common venture will be solely derived from the efforts of persons other than the venture's investors.

Both Turner and Variable Annuity were cited in Forman. The Supreme Court did not speak disapprovingly of either case. 421 U.S. at 852 n. 16 and 857 n. 24.

That this profit element is fixed because pension payments are set at specific levels from time to time is wholly immaterial to gain being profit in the *Forman* sense. A number of instruments which all would concede to be securities (bonds, debentures, etc.) are fixed return.

cess of the pensioner's investment that forms the economic inducement to invest in a pension fund.24.

Recently the district court for the District of Columbia has decided that surviving spouses and dependents of deceased coal miners, who claimed a right to permanent health care coverage by the United Mine Workers, did not have an interest in the United Mine Workers of America 1950 Benefit Plan and Trust, which provides health benefits for active and retired miners, their families, dependents and survivors, that could be deemed to be a "security" under the 1933 or 1934 Acts. Robinson v. United Mine Workers of America Health and Retirement Funds et al., Civ. No. 77-0698 (D. D.C. July 29, 1977). Although conceding that the district court's opinion in Daniel was distinguishable from his case (mem. op. 3 n. 1), Judge Gesell in dicta disagreed with the reasoning of Judge Kirkland in Daniel.

The Robinson opinion was based squarely on the gloss United Housing Foundation v. Forman, 421 U.S. 837, gives to the term "investment contract" appearing in the securities acts' definitions of "security." Judge Gesell's "reluctance" to find the Robinson plaintiffs' interest to be an investment contract was based entirely upon his view that Forman foreclosed such a result (mem. op. 3). Robinson is not applicable here.

In no sense could the spouses and dependents of the deceased coal miners in *Robinson* be viewed as investing in the fund since they contributed nothing to the employers in return for the employers' payment of pertonnage royalties into the trust fund on behalf of and in

return for the services of the union miners. The Robinson plaintiffs were donees instead of purchasers, so that the requisite Blue Chip sale (421 U.S. 723) was lacking.

Unlike Daniel, where Local 705 members could affect the employers' payments into the pension fund or the allocation of contributions between pension fund payments and current wages by failing to ratify a given contract with set contribution levels, the Robinson plaintiffs were powerless to increase or decrease payments or convert them to their personal use. Additionally, there was no expectation of profit in Robinson, because benefits were to be paid out of the employers' current contributions to the trust rather than depending on the fund's capital. In Daniel, however, funding of the benefit program was crucially dependent on profits from the investment of the fund capital. Further, all the assets of the pension fund not committed to pay out current benefits were invested at risk for profit.

Although the UMW Benefit Plan included retirement benefits for retired miners and lump-sum death benefits to their heirs, only the length of time health care coverage was to be extended to the plaintiffs was in issue in Robinson. That case therefore involved merely the consumption of "free" medical care rather than, as in Daniel, an actual dollar financial return on investment, i.e., "an expectancy of dollar benefits," which the investor could then use to purchase anything he chose. 421 U.S. at 852-853.

To declare the Robinson plaintiffs' interest in the benefit plan to be a "security" would indeed have required "a degree of creativity unwarranted by the realities of the transactions and the function and purpose of the securities laws" (mem. op. 3). As already shown, to declare Daniel's interest to be a security does not require such an attempt "to stretch the securities laws beyond their traditional scope" (mem. op. 5). Finally, the legislative history relied upon in Robinson concentrates on the registration provisions of the securities laws rather than the anti-fraud provisions, as discussed more fully infra.

The district court also noted "there is no warranty that the trust will be able to fund the supposed fixed benefits due to members of the plaintiff class". 410 F.Supp. at 550. This resulting risk was deemed to generate "risk capital" return under Silver Hills Country Club v. Sobieski, 55 Cal.2d 811, 361 P.2d 906 (1961). Some doubt as to the validity of the risk capital approach exists. See Forman, 421 U.S. at 857 n. 24. Since traditional profits are present in our case, we need not explore the risk capital theory beyond noting that pensioners are far from taking "no risk in any significant sense." Id.; El Khadem v. Equity Securities Corp., 494 F.2d 1224 (9th Cir. 1974), certiorari denied, 419 U.S. 900.

Economic Reality

The literal passage of the *Howey* test is only the first hurdle. The definitional sections herein involved are introduced with the phrase "unless the context otherwise requires." This context is, of course, economic reality in view of the surrounding factual circumstances. *Emisco Industries*, *Inc. v. Pro's*, *Inc.*, 543 F.2d 38 (7th Cir. 1976). As Mr. Justice Powell explained in *Forman*:

"The primary purpose of the Acts of 1933 and 1934 was to eliminate serious abuses in a largely unregulated securities market. The focus of the Acts is on the capital market of the enterprise system, the sale of securities to raise capital for profit-making purposes, the exchanges on which securities are traded, and the need for regulation to prevent fraud and to protect the interest of investors. Because securities transactions are economic in character Congress intended the application of these statutes to turn on the economic realities underlying a transaction, and not on the name appended thereto. Thus, in construing these Acts against the background of their purpose, we are guided by a traditional canon of statutory construction:

"'[A] thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers.' Church of the Holy Trinity v. United States, 143 U.S. 457, 459 (1892)." 421 U.S. at 849.

If an interest is not a security in economic reality, abuses should be remedied by Congress rather than by an over-liberal extension of the securities laws. *Id.* at 859 n. 26.

However, the economic inducement for plaintiff's interest in the pension fund was investment for a profit to provide wherewithal in his retirement. This plaintiff's interest in the fund embodies many of the significant characteristics typically present in the instruments concededly covered by the securities acts. *Id.* at 851. Plaintiff has an undivided interest in the Local 705 Pension Fund consisting of the aggregate of all monies invested on behalf of Local 705 union members by covered employers for whom those members worked. Those

monies are managed and invested by the pension fund trustees in stocks, bonds, mortgages and other investments for the sole benefit of Local 705 members. As such, the Local 705 Pension Fund resembles a mutual fund, viz. a pool of money invested for the benefit of the mutual fund shareholder by the fund manager. The amount of payout to any particular member would depend upon his length of service in covered employment, the extent of funding in the plan and the monthly pension determined by the trustees. Their success in money management will be one of the most important factors in determining the amount of payout. A Local 705 member invests \$1,248 per year through his employer contributions into that fund. Since an interest in a mutual fund is a security, the interest in a pension fund should also be considered a security. See, Testimony of SEC Commissioner Purcell, Hearings on Proposed Amendments to the Securities Act of 1933 and the Securities Exchange Act of 1934 before the House Committee on Interstate and Foreign Commerce, 77th Cong., 1st Sess. 895 (1941). Otherwise the trustees of private pension plans with annual employer contributions of \$23 billion for the benefit of 30 million employees25 will be able to mislead their beneficiaries with immunity from the anti-fraud provisions of the 1933 and 1934 Acts.

Not only is plaintiff's interest like an interest in a mutual fund, it is also like an interest in a variable annuity contract. Variable annuity contracts have been held to be recurities within the securities laws. SEC v. Variable Annuity Life Insurance Co., 359 U.S. 65; SEC v. United Benefit Life Ins. Co., 387 U.S. 202. The securities in VALIC and United Benefit were investment vehicles designed to provide a return on capital upon retirement. Even though the annuity contract in VALIC contained several elements of traditional life insurance and although the flexible fund annuity in United Benefit contained a minimum insurance type guarantee, the Court separated the conventional life insurance attributes from the security involved. See, e.g., United Benefit, supra, at 207. Similarly, the employment fringe

Skolnick, Private Pension Plans, 1950-74, 39 Social Security Bulletin 34 (June 1976).

benefit aspect of a pension can be separated from its security aspects. Plaintiff can be both an investor and employee. See, e.g., SEC v. Koscot Interplanetary, Inc., 497 F.2d 473, 476 (5th Cir. 1974); Collins v. Rukin, 342 F.Supp. 1282 (D. Mass. 1972). As in VALIC and United Benefit, a Local 705 member is entitled to full disclosure of the material of the enterprise in which his money is put so that he can intelligently appraise the risks involved.

Reduced to fundamentals, economic reality mandates the realization of the immense importance of private pension plans to the American capital markets. As a

Senate Report has disclosed:

"In 1940, an estimated four million employees were covered by private pensions; in 1950, the figure had more than doubled to 9.8 million; in 1960, over 21 million employees were covered; and in 1973, approximately 30 million workers participated. Currently, one-half of the industrial work force in the United States are members and participants of private pension plans. It is projected that by 1984, 42.3 million workers will be covered by private pension plans. The growth of the assets owned or controlled by pension funds has closely paralleled this expansive growth. Total estimate 'assets of pension plans have accelerated from \$2.4 billion in 1940 to \$150 billion in 1973 and are increasing at a rate projected to exceed \$250 billion by 1980." (Emphasis added) S. Rep. No. 93-127, 93rd Cong., 2d Sess. 2-3 (1973).

Because of favorable tax provisions and economies of scale, pension funds are the most efficient way for an employee to invest. N. Ture, the Future of Private Pension Plans 3 (1976). On a relative scale, his pension plan will probably be a Teamster member's largest investment. On an aggregate basis, private pension funds control a huge amount of the capital markets. At the end of 1972, they held 11% in value of all New York Stock Exchange listed stocks and in the same year they accounted for over 23% of the dollar value of all shares traded there. If the sole investment vehicles for tens of millions of Americans which in the aggregate control a

quarter or more of the entire capital market are exempt from the anti-fraud provisions of the securities laws, then policing of the capital markets is significantly neutralized.

Legislative History and SEC Interpretation

Not only do the cases support consider this interest as an investment contract, but so do the legislative history and the SEC's interpretation of the securities acts. The legislative history of the 1933 and 1934 Acts themselves is silent on the question of pension plans. However, subsequent legislative action and accompanying SEC interpretation do provide a measure of guidance in construing the 1933 and 1934 Acts.

Thus in 1934, the Senate adopted an amendment to the 1933 Act to exempt from registration

"an offering made solely to employees of an issuer or of its affiliates in connection with a bona fide plan for the payment of extra compensation or stock-investment plan for the exclusive benefit of such employees". 78 Cong. Rec. 8708 (1934). (Emphasis supplied.)

The amendment was eliminated in conference in order to protect participants in such plans who

"may be in as great need of protection afforded by availability of information concerning the issuer for which they work as are most other members of the public." H.R. Rep. No. 1838, 73d Cong., 2d Sess. at 41 (1934).28

(Footnote continued on following page)

As to the significance of subsequent congressional expressions with respect to the meaning of earlier statutes, see National Labor Relations Board v. Bell Aerospace Co., 416 U.S. 267, 274-275; Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 380-381.

As to the significance of subsequent SEC administrative practice with respect to the meaning of the securities laws, see *United States v. National Ass'n of Securities Dealers*, 422 U.S. 694, 725; Chemehuevi Tribe of Indians v. FPC, 420 U.S. 395, 409-410.

Since the 1934 Act was passed by the same Congress that passed the 1933 Act, this legislative history is tantamount to being actual 1933 Act history and should be credited accordingly. *Tcherepnin v. Knight*, 389 U.S. 332, 336, 342.

In 1941, SEC Commissioner Purcell commented on the 1934 rejection of the Senate amendment as requiring the SEC to interpret the 1933 Act as applying to employee pension funds which involve the sale of securities as "investment contracts." In his view, this included any

"plan under which employees are given the opportunity to place part of their earnings in a fund which is to be invested for their benefit and returned to them at a later date \* \* \*." 1941 Hearings at 895-896.

Commissioner Purcell also noted that the 1940 Congress was aware of the economic congruence between employee pension plans and ordinary mutual funds because it defined an "employees' security company" as one type of "investment company" in Section 2(a)(13) of the Investment Company Act of 1940. 1941 Hearings at 895. Consequently, an employee pension plan is regulated by the 1940 Act unless it falls within an exemption from registration. See, e.g., 15 U.S.C. §§ 80a-3(c)(11) and -6b.

Similarly, the opinion of the Assistant General Counsel of the SEC in 1941 was that "security" within the definition of the 1933 Act included employee pension plans. More recently, former Chairman Cohen of the SEC also has testified on the basis of his own expertise as to the common understanding of a number of institutional investors that interests in a pension plan fall

within the definition of a security in the 1933 Act.<sup>31</sup> Like Commissioner Purcell, he explained that is why they had to be specifically exempted from the Investment Company Act of 1940 (15 U.S.C. § 80a-3(c)(11)). Additionally, he mmented on the similarities between a pension fund and a mutual fund investment. Accordingly, Professors Mundheim and Henderson have characterized the SEC's interpretation of "security" as used in the securities laws as including an interest in employee pension plans as that "traditionally taken."<sup>32</sup>

Moreover, the statements by Congressman Wolverton deal with "supervision" or "regulation" under the 1933 Act, viz., registration. But as we show in the opinion, the registration provisions of the 1933 Act do not apply to securities consisting of interests in pension plans. It might be that a realization of this fact will calm concerns about undue "regulation of employee benefit plans." Statement of Representative Dent, 174 D.L.R. at A-6 (BNA, Sept. 7, 1976).

Recently, class action suits against employee profit-sharing plans have charged that the managers of these plans have failed in their responsibilities by investing too much in the employer's own stocks. Employees Wrath Hits Profit-Sharing Plans, Bus. Week, July 18, 1977 at 25.

Hearings on Proposed Amendments to the Securities Act of 1933 and the Securities Exchange Act of 1934 before the House Committee on Interstate and Foreign Commerce, 77th Cong., 1st Sess. 895-896 (1941) (1941 Hearings).

Opinion of Assistant General Counsel of SEC [41-44 Transfer Binder] CCH Fed. Sec. L. Rep. ¶ 75, 195 (1941).

Hearings on S. 3598 before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 92 Cong., 2d Sess. 231 (1972). In those hearings, Mr. Cohen included Ch. VII of the Summary Volume of the SEC's 1971 Institutional Investor Study which states that interests of participants in employee pension plans meet the definition of security in the 1933 Act. See also Interim Report, Senate Committee on Labor and Public Welfare, S.Rep. 92-634, 92d Cong., 2d Sess. 96 (1972). The defendants concede the SEC has treated interests in pension funds as securities since 1971 (Rep. Br. at 5).

Securities Laws to Pension and Profit Sharing Plans, 29 Law and Contemp. Prob. 795, 811 (1964). The defendants and some amici rely on comments by Congressman Wolverton, a member of the House Committee that reported the 1933 and 1934 Acts, sitting on the Committee before which Commissioner Purcell was testifying that he did not believe Congress intended to regulate pensions under the securities laws. 1941 Hearings, at 870-871, 878, 888, 913. Although the 1934 Congress did not specifically focus on pension funds, the 1934 abortive Senate amendment does show Congress did have some forms of employee security plans in mind. Certainly, the definition of security adopted is broad enough to include the plans.

Congress has evidenced agreement with the SEC's position that interests in pension funds are securities by way of the Investment Companies Amendments Act of 1970. Recognizing that interests in employee pension funds are "securities," in 1970 Congress decided to exempt them from the registration requirements of Section 5 of the 1933 Act (15 U.S.C. § 77e) if the employee pension fund was maintained by a bank or in a separate account maintained by an insurance company (15 U.S.C. § 77c(a)(2)(A)).33 This exemption was to codify the long

33 The exemption comprehends, in pertinent part:

"Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the following classes of securities.

"any interest or participation in a single or collective trust fund maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of Title 26, or (B) an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of Title 26, other than any plan described in clause (A) or (B) of this paragraph (i) the contributions under which are held in a single trust fund maintained by a bank or in a separate account maintained by an insurance company for a single employer and under which an amount in excess of the employer's contribution is allocated to the purchase of securities (other than interests or participations in the trust or separate account itself) issued by the employer or by any company directly or indirectly controlling, controlled by or under common control with the employer or (ii) which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of Title 26. The Commission, by rules and regulations or order, shall exempt from the provisions of section 77e of this title any interest or participation issued in connection with a stock bonus, pension, profit-sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of Title 26, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this subchapter." (Emphasis supplied)

established administrative practice of the Commission in exempting certain pension funds from the registration requirements of the 1933 Act. H.R. Rep. No. 91-1631, 91st Cong., 2d Sess. 31 (1970). A similar exemption amendment was provided with respect to the 1934 Act. 15 U.S.C. § 78c(a)(12).34 This action of course shows that

34 The 1934 Act provision provides:

"The term 'exempted security' or 'exempted securities' includes—

"any interest or participation in a collective trust fund maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with (A) a stock-bonus pension, or profit-sharing plan which meets the requirements for qualification under section 401 of Title 26, or (B) an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of Title 26, other than any plan described in clause (A) or (B) of this paragraph which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of Title 26; and such other securities (which may include, among others, unregistered securities the market in which is predominantly intrastate) as the Commission may, by such rules and regulations as it deems necessary or appropriate in the public interest or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this chapter which by their terms do not apply to an 'exempted security' or to 'exempted securities.

This provision specifically exempts only interests in collective trust funds while the 1933 Act exemption includes interests in single funds. However, the final clause of the exemption quoted above gives the SEC plenary authority to exempt other securities from the reporting requirements of the 1934 Act. The comments of the General Counsel of the SEC speaking for the Commission in argument before us suggests the SEC in the exercise of this power has decided that interests in pension funds are "exempted securities" under the 1934 Act.

However, under the 1933 Act the SEC's interpretative and quasi-legislative powers are limited by Section 3(b) which provides "no issue of securities shall be exempted under this subsection where the aggregate amount at which such issue is offered to the exceeds \$500,000" (15 U.S.C. § 77c(b)). Accordingly, in order to achieve exempted status for securities such as interests in pension funds under the 1933 Act, Congress could not rely on SEC administrative practice being binding as it could under the 1934 Act. Thus the wording differences between the 1933 and 1934 Act represent a need to codify the administrative practice under the 1933 Act.

Congress considered such pension funds to be securities that would not be exempt from registration absent the 1970 Amendments. Therefore, if the Local 705 Pension Fund is being maintained by a bank, the interests involved here would be securities exempt from registration. However, exemption from registration and reporting requirements does not mean exemption from Section 17(a) of the 1933 Act, Section 10(b) of the 1934 Act and Rule 10b-5 thereunder, as the House Committee on Interstate and Foreign Commerce realized in its report. See also 15 U.S.C. § 77q(c).

Defendants and the amici who support their position seek to downplay the importance of the 1970 Amendments by arguing that the 1970 exemption relates only to the sale of interests in certain bank collective trust funds and insurance company separate accounts for pension funds, claiming that the sale to employees of interests in the underlying pension fund is entirely outside the scope of the 1970 act. However, these arguments relate to legislative history concerning an earlier version of the Act which referred only to "collective" trust funds. A close study of the legislative history shows that the version of the Act which was finally adopted contemplated the interests sold to employees in the underlying pension fund.

The principal stimulus for the amendment to the 1933 Act in 1970 was to settle the legal status of certain commingled investment accounts maintained by banks and insurance companies.<sup>37</sup> As a result the early versions of the bill only exempted:

"any interest or participation in a collective trust fund maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with \* \* \* a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954" (emphasis added).

See, e.g., S. 34, 91st Cong., 1st Sess. 65 (1969), reprinted in S. Comm. on Banking and Currency, Analysis of S. 34, 91st Cong., 1st Sess. 119 (1969). After the Senate passed a bill containing this language, the General Counsel of the Sperry-Rand Corporation wrote a letter to the House Subcommittee considering the legislation pointing out that the bill did not exempt interests in single trust funds. Hearings Before a Subcommittee of the House Committee on Interstate and Foreign Commerce, 91st Cong., 1st Sess., Part 2 at 929-931. His suggestion was to add the language "or any employees' stock bonus, pension or profit-sharing trust" after "separate account maintained by an insurance company."

In response to this suggestion, the Subcommittee reported out a bill with the added phrase "single or" to precede the phrase "collective trust fund maintained by a bank." This version, later passed by the House, thereby altered the focus of the exemption to encompass interests in the underlying pension funds. The Conference Report went along with the House version:

A large portion of Local 705's Pension Fund is maintained by the trust departments of major Chicago banks. See note 61, infra. Plaintiffs represent that "because most employee pension plans are bank maintained, registration is not required for most employee pension plans" (Pl. Br. at 37-38).

Report of the House Committee on Interstate and Foreign Commerce on the Investment Company Amendments Act of 1970. H. Rep. No. 91-1382, 91st Cong., 2d Sess. 10, 43 (1970).

<sup>&</sup>quot;Banks maintaining these collective funds would solicit money from various institutional investment vehicles, including pension funds, and would promise to commingle the funds to take advantage of the economies of size that could be gained in the securities market and the investment expertise of the bank's analysts. Since an interest in such collective funds held by an individual pension fund is a security and the bank collective fund an investment company, efforts were made to exempt this security from the registration provisions of the Securities Act and the collective fund from the Investment Company Act." (SEC Br. 32 n. 40)

"The Senate bill exempted from the registration requirements of the 1933 Act certain collective trust funds maintained by a bank or in a separate account maintained by an insurance company.

"The House amendment would have codified a long established administrative practice of the Commission by making it clear that this exemption applied not only to collective trust funds, but also to single trust funds.

"The conference agreement follows the House version." H.R. Rep. No. 91-1631, 91st Cong., 2d Sess. 31 (1970).

Two subsequent changes in the language of the exemption show the shift to include interests in the underlying plans. Although the Conference Committee generally adopted the House version, it did include a small modification. Since the House provision exempted interests in all pension funds, it was contrary to the SEC's administrative position that non-registration of pension interests did not apply in all situations. In particular, the SEC required registration where an amount in excess of the employer's contribution to a pension fund is allocated to the purchase by the fund of securities issued by the employer. In order to conform the exemption, a provision was included to exclude the above situation from exemption. *Id.* at 24.

This exclusion generated another legislative fillip. The exclusion applied when the excess was used to purchase securities issued by the employer. Since interests in pension funds are themselves securities, the exclusion could potentially be interpreted to require registration of all pension plans where any money is contributed to the pension plan directly by employees, since they could be conceptualized as buying securities. Accordingly, Section 3(a)(2) of the 1933 Act was amended one week after

the passage of the 1970 Amendments to make it clear that the term "security issued by the employer" did not include the securities consisting of the interests in the pension fund. See 116 Cong. Rec. 40608 (Dec. 9, 1970).

Therefore the 1970 Amendments show that Congress intended to conform the 1933 Act to the SEC's administrative view that, although interests in pension funds did not need to be registered in most cases, they are nonetheless securities. See 116 Cong. Rec. 33287 (Sept. 23, 1970). When conjoined with the above-detailed legislative history and SEC interpretation, the 1970 Amendments provide substantial support for the proposition that an interest in an employee pension fund is a security.

#### Policy

Perhaps the main reason that pension plans are not specifically mentioned in the legislative history of the 1933 and 1934 Acts themselves is the fact that in the early 1930's pension plans were still a rarity. In the early decades of the 20th century, only 38% of invested capital was invested indirectly, and of this amount only 1/10 of 1% was invested in pension funds. By 1962, the indirect sector of the capital markets had jumped to 83% and pensions constituted 27% of this amount. Hearings Before the Subcommittee on Fiscal Policy, U.S. Cong. Joint Economic Committee, 91st Cong., 2d Sess. 17-18 (1970). Since 1955, the asset value of pension plans has exceeded the total accumulated by the other three major institutional investors: mutual funds, life insurance companies and property and liability insurance companies. We are informed by an amicus curiae that the book value of private pension plan assets is \$216.9 billion, the largest single source of private investment capital in the economy.

Because employee pension plans are now the major, if not sole, form of investment for most American workers to provide for their old age and because of the now crucial role that such plans play in today's capital markets, they are just the sort of investment vehicle that the securities acts were passed to regulate. To proclaim

<sup>&</sup>lt;sup>38</sup> "In particular, there was concern that where an insurance company maintained a separate account to fund pension benefits for its own employees, interests in such an account might be considered securities issued by the employer." (SEC Br. 34 n. 44.)

that the securities laws encompass securities consisting of interests in pension plans is "quite consistent with the congressional enactment and with the role of the federal judiciary in interpreting it \* \* \*." Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 737. The type of fraud allegedly perpetrated on the plaintiff is among those the securities laws were passed to prevent and remedy.

Of course, the normal scheme of the securities acts require registration as well as providing anti-fraud remedies. However, as demonstrated above, the 1970 Amendments codified the SEC's practice of exempting pension funds from the registration requirements of the 1933 Act. Thus declaring an interest in a pension fund to be a security will not subject any plans to registration which are not already so subject. Consequently, since the anti-fraud provisions do not impose an undue burden on anyone, they should be available to employees to remedy fraud. Mundheim and Henderson, supra, at 814. The proper inquiry then is not whether interests in employee pension plans are securities but rather why such a vital investment vehicle should be nevertheless excluded from the protection of the securities laws. We now turn to this inquiry.

Plaintiff's Security Was Acquired in a "Sale"

Defendants maintain that even if the plaintiff's interest is a security, his cause of action is defeated because he did not acquire it in a sale.

The 1933 Act defines "sale" as including

"every \* \* \* disposition of a security or interest in a security for value" (15 U.S.C. § 77b(3)).

and the 1934 Act defines "sale" as including "any contract to sell or otherwise dispose of" (15 U.S.C. § 77c(a)(14)). Accordingly, in both Acts, a "sale" of an interest in a pension fund depends upon whether there has been a disposition of it. Here plaintiff acquired an interest in the Local 705 Pension Fund, and as shown, that interest is a security. Therefore, there necessarily has been a disposition of a security to plaintiff within the scope of the two Acts. The 1933 Act also requires

that the disposition be "for value." Here plaintiff's giving of his services and the employer's contribution on behalf of the employee constitutes value, thereby meeting the "for value" requirement. See S.Rep. No. 1440, 85th Cong., 2d Sess. 4 (1958). From the employee's viewpoint, the contributions to the pension fund are part of his compensation and the value flows from him to that extent.39 From the employer's viewpoint, the contribution flows from the employee, constituting a part of the employee's compensation package. In either event, value has been given for a security, so that erection of a direct-indirect dichotomy is unwarranted. SEC v. Harwyn Industries Corp., 326 F.Supp. 943, 954-955 (S.D. N.Y. 1971, Mansfield, J.); see also Hector v. Wiens, 533 F.2d 429, 431-433 (9th Cir. 1976); cf. Pete v. United Mine Workers, 517 F.2d 1275, 1287 (D.C. Cir. 1976).

The defendants maintain there is a controlling conceptual distinction between "non-contributory" plans and plans where the employee first receives cash and then pays over such cash into the pension fund. We refuse to subscribe to undue literalism. An employee's performance of services satisfies the for value requirement of

"An important theme which emerged from Subcommittee hearings related to the basic dichotomy in the rationale for a pension plan. Repeatedly, witnesses volunteered testimony that they regarded their pension benefits as deferred wages. Since labor negotiations resulting in wage increases through collective bargaining invariably include some consideration of pension benefits, employees believe that had pensions not been included in the settlement package, they would have received higher wage commitments." S.Rep. No. 92-634, Interim Report of Activities of the Pension Welfare and Pension Plan Study, 1971, 92d Cong., 2d Sess. 75 (1972).

Union spokesmen for both the United Auto Workers and the Teamsters have testified that pensions are deferred wages which are given high priority in collective bargaining. As to the UAW, see Hearings before the Senate Subcommittee on Private Pension Plans of the Committee on Finance, 93d Cong., 1st Sess. 467 (1973). As to the Teamsters, see Hearings before the Special Subcommittee on Labor, House Committee on Education and Labor, 87th Cong., 1st Sess. 225 (1961). This was the recurrent theme emerging from the ERISA [Employment Retirement Income Security Act] hearings as well:

the 1933 Act. See Collins v. Rukin, 342 F.Supp. 1282 (D. Mass. 1972); SEC v. Addison, 194 F.Supp. 709 (N.D. Tex. 1961); Lawrence v. SEC, 398 F.2d 276 (1st Cir. 1968); see also Truncale v. Blumberg, 88 F.Supp. 677 (S.D. N.Y. 1950); Hector, supra, at 432. Recent SEC interpretations also support the view that an interest in a non-contributory plan is gained for value. Oklahoma National Gas Co. [71-72 Transfer Binder] CCH Fed. Sec. L.Rep. ¶ 78,583 (1971); Allis-Chalmers Corp. [72-73 Transfer Binder] CCH Fed. Sec. L.Rep. ¶ 78,803; Keene Corp. [71-72 Transfer Binder] CCH Fed. Sec. L.Rep. ¶ 78,475; Missouri Research Laboratories, Inc. [72-73 Transfer Binder] CCH Fed. Sec. L.Rep. ¶ 79,-036.

Defendants argue that there can be no sale because the contribution to the pension fund is compulsory. However, the definitions of "sale" in the 1933 and 1934 Acts do not require volition. In any case, volition is present to the extent that Local 705 members voted whether or not to accept the collective bargaining contract containing this pension fund and whether to ratify subsequent agreements governing the level of employer contributions into the fund or seek dismissal of union officers or the unlikely radical measure of decertification of the Union.40 Similarly, in the corporate merger 40 The Teamsters maintain that a local whose constitution requires member ratification of pension plan agreements such as 705's is a rarity. Be that as it may, in our mobile society, an employee will be faced with a number of employment decisions during his career, and as he ages, such shifts will be more and more affected by the pension plan offered by a prospective employer. Accordingly, an employee may be faced with a meaningful decision even in the case of a compulsory plan whether to acquire interests in the pension fund. See Note, supra, 70 Harv. L. Rev. at 494. Needless to say, this construct does not render the individual employee a party to the bargain with the employer in the technical labor law sense. In this sense, the Union remains the exclusive agent.

Amicus ERIC suggests that if ratification is the doctrinal reed upon which a finding of volition is hung, unions will quickly eliminate ratification votes. First, we have shown that volition can exist even if ratification does not. But in any event, volition is not necessary for a sale under the securities acts. Even in a worst-case analysis, movement away from contract ratification would probably be limited. Elimination would require constitutional amendment which would presumably be difficult to achieve, requiring, in effect, a vote to weaken union democracy.

context (where a vote by the shareholders to merge is binding notwithstanding any individual shareholder's vote to the contrary), cases under the anti-fraud provisions have held that a sale occurs where there is no voluntary action by the alleged purchaser. Vine v. Beneficial Finance Co., 374 F.2d 627, 635 (2d Cir. 1967); Zeller v. Bogue Electric Manufacturing Corp., 476 F.2d 795 (2d Cir. 1973); International Controls Corp. v. Vesco, 490 F.2d 1334 (2d Cir. 1974), certiorari denied, 417 U.S. 932. The volition argument in a no-sale conclusion in the merger context, which was used only in the registration milieu, was derived from SEC Rule 133 (33 C.F.R. § 230-133 (1964)) but it was rescinded in 1972. In rescinding that rule, the Commission characterized that rationale as "only correct in the formalistic sense" in that it "overlooks the reality of the transaction." As the SEC pointed out, the "corporate action \* \* is not some type of independent fiat, but is only the aggregate effect of the voluntary decisions made by the individual stockholders \* \* \*." 37 Fed. Reg. 23631, 23632 (Nov. 7, 1972). To like effect, the Local 705 Pension Fund contributions are not an independent employer fiat but rather represent the aggregate effect of the union members.

Also, plaintiff's affidavit shows that he would not have worked for a Local 705 covered employer if he had been advised about the continuous nature of the 20-year requirement before receiving a pension. When an employee decides to retain his job, his decision results in his continuing to give value in the future and in his further acquisition of interests in the pension fund.

In its brief as amicus curiae, the SEC has persuasively shown why it formerly reached a different result for the purposes of the 1933 Act's registration provisions in the case of plans that are either non-contributory or compulsory. It was reasoned that there was no sale involved for a non-contributory plan because there was no direct investment of money by the employee, consistent with the then current legal view that the employer's contributions were gifts. Although the SEC recognized that an individual had a choice whether to become or remain an employee, it was thought that the choice would never

turn on representation concerning the pension plan. Interestore compulsory plans were not considered to involve sales. Testimony of Commissioner Purcell, 1941 Hearings at \$297; Opinion letter of the Assistant General Counsel of the SEC, 1 CCH Fed. Sec. L.Rep. 12105.53; Testimony of Chairman Cohen, Hearings on Amendment No. 438 to S.1659 Before the Senate Committee on Banking and Currency, 90th Cong., 1st Sess., mittee on Banking and Currency, 90th Cong., 1st Sess., part 3, at 1326 (1967). See also 3 SEC Institutional Investor Study 980 quoted in Rep. Br. at 7-8.

These positions were never taken as to the anti-fraud provisions and are no longer viable even as to the registration provisions because non-contributory pensions are no longer viewed as a mere gift. Even though the Commission had in the past applied a no-sale rule to pension trusts as to the registration requirements of the 1933 Act, that rule was not administratively and should not be judicially applied to the anti-fraud provisions of both Acts. SEC v. National Securities, Inc., 393 U.S. 453, 465-466. The purposes of the registration and antifraud provisions differ (The Exchange National Bank of Chicago v. Touche Ross & Co., 544 F.2d 1126, 1139 (2d Cir. 1976)), so that a narrow view of "sale" would be most inappropriate as to fraudulent activity. Collins v. Rukin, 342 F.Supp. 1282, 1287-1288 (D. Mass. 1972). Since "sale" as used in the two securities laws is not limited to transactions covered by the commercial law of sales but is to be broadly construed in view of the need for anti-fraud protection,<sup>42</sup> we conclude that the present disposition to plaintiff falls within the definitions of sale in the two statutes. See *Dasho v. Susquehanna Corp.*, 380 F.2d 262, 266-267, 269 (7th Cir. 1967).<sup>43</sup>

Section 17(a) of the 1933 Act Creates a Private Cause of Action

It is now well settled that Section 10b of the 1934 Act and Rule 10b-5 give rise to a private right of action for the breach of its substantive terms. Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 730-731. The existence of a private right of action under Section 17(a) of the

<sup>42</sup> As one industry spokesman has testified:

"The magnitude of the investment employers make in pension benefits for employees, encourages the tendency to present the plan in the most positive terms possible so that a return in positive employee attitudes can be realized on the investment. This leads to over simplification and an advertising sales approach. When, as is so often the case, the communication material is prepared by persons not thoroughly cognizant of the technical and legal nature of plan provisions, the result can easily become a document subject to criticism as incomplete and misleading." Testimony of Ernest Griffes on behalf of the American Society for Personnel Administration, Hearings before the Subcommittee on Labor, Senate Committee on Labor and Public Welfare, 93d Cong., 1st Sess. 765 (1973)

43 Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, on which defendants rely, reaffirmed the Birnbaum rule (note 17 supra) that liability under Section 10(b) of the 1933 Act and Rule 10b-5 requires a purchaser and seller. It does not weaken our holding in Dasho that "sale" in the securities laws is a comprehensive term not to be narrowly construed. Similarly, Alabama Power Co. v. Davis, ..... U.S. ...., 45 LW 4588, is not contrary to the opinion below. That case merely categorizes pension plans as a compensation for length of service rather than for daily services rendered as required under the prevailing conceptualization on employee rights given returning veterans under the Military Selective Service Act. Although Hurn v. Retirement Trust Fund, 434 F.Supp. 80 (C.D. Ca. 1977), and Wiens v. International Brotherhood of Teamsters, BNA Sec. Reg. and L.Rep. No 397 at A-13 (C.D. Ca. 1977) (where the district judge gave his ruling from the bench), support defendants, neither contains an in-depth discussion and we respectfully decline to follow them.

This is invalid in our case because Daniel's affidavit reveals material reliance on pension benefits in retaining his job. Moreover, now that pension benefits have become such an important part of the total wage package, this conclusion has little, of any, general application. See S.Rep. No. 1734, little, of any, general application. See S.Rep. No. 1734, Welfare and Pension Plan Investigation, 84th Cong., 2d Sess. Welfare and Pension Plan Investigation, 84th Cong., 2d Sess. 11-13 (1956); Hearings before the Special Subcommittee on Labor, House Committee on Education and Labor, 87th Cong., Labor, House Committee on Labor and Public Welfare, 92d Labor, Senate Committee on Labor and Public Welfare, 92d Labor, Senate Committee on Labor and Public Welfare, 92d Cong., 2d Sess. 99 (1972). Pensions are second only to wages as Cong., 2d Sess. 99 (1972). Pensions are second only to wages as a reason for membership rejection of settlement proposals and a reason for membership rejection of settlement proposals and are well ahead of such factors as vacations, hours and overtime, working conditions and seniority. Simkin, Union Membership Rejection of Contract Settlements, Labor Relations Yearbook 332, 342 (IPIR Br. at 13).

1933 Act is not as universally admitted. Id. at 733 n. 6. Since we proceed on the assumption that the operative provisions of the anti-fraud sections of the 1933 and 1934 Acts are identical for the purposes of this lawsuit, the validity of our unitary analysis requires that we deem Section 17(a) of the 1933 Act as creating a private action under the facts of this case.

As a preliminary matter, Judge Kirkland rejected Local 705's and Peick's argument that Section 17(a) of the Securities Act of 1933 does not create a private cause of action, 410 F.Supp. at 546. In the court below and in its principal brief here, no argument was presented by the International Brotherhood as to the existence or nonexistence of a private cause of action under Section 17(a). The language of Section 17(a) (15 U.S.C. § 77q(a)) is certainly broad enough to imply such a right. In fact, Section 17(a) is more specific than Section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. § 78j(b)) under which private rights of action have been commonly approved. See Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 730. Accordingly, in another opinion by the same district court as below, Judge McGarr also held that Section 17(a) impliedly calls for a private right of action. Local 734 Trust v. Continental Illinois National Bank & Trust Co., [73-74 Transfer Binder] CCH Fed. Sec. L.Rep. 1 94,565 at 95,963 (N.D. Ill. 1974). After noting that various courts have expressly recognized the existence of such a remedy while others have assumed it, the Local 734 Trust court concluded "there seems to be little practical value in denying the existence of a private action under § 17 once [as here] it is established that a plaintiff has an action under § 10(b) of the 1934 Act."44

In Surovitz v. Hilton Hotels Corp., 342 F.2d 596, 604 (7th Cir. 1965), reversed on other grounds, 383 U.S. 363, we first assumed there was a private cause of action under Section 17(a), for Judge Major stated "[t]he plain language of that Section convinces us that any cause of action arising under that Section is a right of the person injured by the acts and practices therein proscribed." In Schaefer v. First National Bank of Lincolnwood, 509 F.2d 1287, 1293 (7th Cir. 1975), this Court squarely held that Section 17(a) permits a private cause of action, stating:

"Since [as here] fraud as well as negligence has been alleged and the section 10(b) claims established plaintiffs' section 17 claim will be allowed to stand."45

In Local 705's main brief before us, the Section 17(a) point is only mentioned in passing (Br. 21). Similarly, in their joint reply brief, defendants do "not particularize with respect to the non-applicability of [Section 17(a)]" (Reply Br. 8 n. 19). Defendants there observed that the 1933 Act relates to the initial issuance of securities and the 1934 Act relates to the resale market and then reasoned that Section 17(a) is the only anti-fraud provision even possibly applicable here. Finally, the reply

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For similar rulings by the court below, see Freed v. Szabo Food Service, Inc., [61-64 Transfer Binder] CCH Fed. Sec. L.Rep. ¶ 91,317 (N.D. Ill. 1964); Schaefer v. First National Bank of Lincolnwood, 326 F.Supp. 1186, 1190 (N.D. Ill. 1970), affirmed in this respect, 509 F.2d 1287, 1293 (1975); contra, Reid v. Mann, 381 F.Supp. 525, 526-528 (N.D. Ill. 1974), noting the divergence of opinion on the subject.

In Globus v. Law Research Service, Inc., 418 F.2d 1276, 1283-1284 (2d Cir. 1969), certiorari denied, 397 U.S. 913, the Second Circuit decided there was a cause of action under Section 17(a) because there was "little practical point in denying the existence of an action under Section 17 once it is established that an aggrieved buyer has a private action under Section 10(b) of the 1934 Act." The court cited many authorities upholding a private right of action for a violation of Section 17(a).

As Judge Friendly has noted, "courts have shrunk from a literal reading that would extend the reach of the statutes beyond what could reasonably be thought to have been intended in these two great pieces of legislation and would produce a seemingly irrational difference in the scope of their anti-fraud provisions." Exchange Nat. Bank, supra, at 1133. (Emphasis supplied.) Here the security is plaintiff's interest in the pension plan. These interests generically arose when the pension plan was first formed for the benefit of Local 705 members. This was the primary distribution of the securities.

brief states that defendants "raise but do not argue the absence of an implied right of private action under Section 17(a)" (ibid. n. 9). In sum, defendants either do not contest or only weakly contest the existence of a private right of action under Section 17(a) where a "sale" of a "security" is present. Having decided that the definitions of a "sale" and "security" have been met by this complaint, we reaffirm Schaefer and therefore hold that Section 17(a) permits Count II to proceed.<sup>47</sup>

The Anti-fraud Provisions of the Federal Securities Laws Have Not Been Pre-empted by ERISA

The defendants<sup>48</sup> and the amici who support their position urge that the Employment Retirement Income Security Act of 1974 (ERISA) has repealed the antifraud provisions of the 1933 and 1934 Acts insofar as they apply to union pension funds. Since we have concluded that the securities laws apply to a union member's interest in his pension fund, pre-emption may only be declared in the face of an explicit repealer provision or the most cogent repugnancy between the securities and pension regulatory schemes. Cf. Gordon v. New York Stock Exchange, 422 U.S. 659, 682-683. Neither of these triggering conditions for pre-emption of the securities laws is present in this case.

Since Daniel was a member of Local 705 at this time, he has standing to sue for fraud in the primary distribution under Section 17(a) of the 1933 Act. Each year Daniel paid more value into the fund and from time to time plan amendments were effected which Daniel claims contributed to his being defrauded. This is the conceptual predicate for finding a secondary distribution under Section 10b of the 1934 Act.

47 In Sanders v. John Nuveen & Co., Inc., ..... F.2d ..... (7th Cir. 1977), we found it unnecessary to decide whether a private right of action exists under Section 17(a) when it is not accompanied by a viable Rule 10b-5 claim (slip op. 8-9). Where, as here, the Section 17(a) count accompanies a viable Rule 10b-5 count, Sanders requires proof of scienter under Section 17(a) (slip op. 9).

48 In the court below, the International Brotherhood conceded that ERISA does not exempt "employee pension plans"

ceded that ERISA does not exempt "employee pension plans from the Federal Securities Laws, either expressly or by implied repeal." International's Sup. Memo. in support of Its Motion to Dismiss at 4 (Oct. 9, 1975).

Section 514(d)<sup>49</sup> of ERISA (29 U.S.C. § 1144(d)) is a general savings clause which provides that ERISA shall not be construed to supersede any federal law or rule thereunder. At the same time, Congress preserved state securities laws (29 U.S.C. § 1144(b)(2)(A)) in Section 514(b)(2)(A)<sup>50</sup> and they generally do not exempt pension interests from their anti-fraud provisions.<sup>51</sup> Thus ERISA's own savings clause by its own terms strongly suggests that pre-emption was not intended.

The defendants attempt to counter the statute's explicit terms by arguing that since it was universally believed pension funds were outside the scope of the securities acts, Congress saw no need to explicitly exempt a truism. But see Jones v. Alfred H. Mayer Co., 392 U.S. 409, 416 n. 20, 437. Defendants strain for support in the legislative history of the various pension regulatory acts. But all of the sources cited by the defendants<sup>52</sup> support only the proposition that

Section 514(b)(2)(A) provides in pertinent part:

"[N]othing in this title shall be construed to exempt or
relieve any person from any law of any State which
regulates \* \* securities."

The Illinois Securities Law of 1953 defines a security, for our purposes, in terms identical to the federal acts. 1975 Ill. Rev. Stat. Ch. 121½, Section 137.2-1. Pension interests are covered by the definition since "securities issued by or pursuant to " \* \* employee pension trusts or plans" are freed from registration requirements. 1975 Ill. Rev. Stat. 121½, Section 137.3-0. A similar definition of security and exemption from registration is included in the Uniform Securities Act which has been adopted in 32 jurisdictions. 7 Uniform Laws Ann., Uniform Securities Act § 501(1) and 402(a)(11) (1970) and Cumulative Annual Pocket Part at 342 (1976).

S.Rep. No. 1440, 85th Cong., 2d Sess. reprinted in 3 U.S. Code Cong. & Admin. News 4145 (1958); Welfare and Pension Plans Investigation, Hearings before the Senate Subcomm. on Labor and Public Welfare, 84th Cong., 1st Sess. 943-945 (1955); S.Rep. No. 1734, 84th Cong., 2d Sess. 57, 60 (1956); 3 U.S. Code Cong. & Admin. News, 93d Cong., 2d Sess. 4649, 4863 (1974); id. at 4641-4643, 4840-4842, 4847. See Mundheim and Henderson, supra. at 837.

Section 514(d) provides in pertinent part:

"Nothing in [ERISA] \* \* \* shall be construed to alter, amend, modify, impair, or supersede, any law of the United States \* \* \* or any rule or regulation issued under any such law."

"Pension and profit sharing plans are exempt from coverage under the Securities Act of 1933 (15 U.S.C. 77 et seq.), unless the plan is a voluntary contributory pension plan and invests in the securities of the employer company an amount greater than that paid into the plan by the employer. A voluntary contributory plan is one to which both the employee and the employer contribute and in which employees voluntarily participate. If the plan's investment in the employer's securities exceeds the employer's contribution, both the employer's securities and the interest in the plan must be registered under the Securities Acts with the SEC." Interim Report of the Private Welfare and Pension Plan Study, 1971, S. Rep. No. 92-634 of the 92d Cong., 2d Sess. 96 (emphasis supplied).

Herein lies the defendants' quintessential error. They confuse the requirements of the 1933 Act's registration provisions with the anti-fraud provisions of the 1933 and 1934 Acts. The registration provisions are designed to assure that investors will be furnished with all material information concerning an informed investment decision. The mechanism to implement this objective includes filing of a registration statement and the delivery of a prospectus containing detailed information about the security and its issuer. In contradistinction, the antifraud provisions do not establish an affirmative disclosure system requiring the filing of documents. Rather the anti-fraud provisions are essentially a generalized self-executing prohibition against fraudulent activity. There is no invitation "to create a federal common law governing the management of pension plans." Lugo v. Employers Retirement Fund, 529 F.2d 251, 255 (2d Cir. 1976), certiorari denied, 45 L.W. 3250.

The fact that the SEC has historically advocated<sup>53</sup> a hands-off approach to the regulation of pension plans

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with respect to disclosure requirements holds no brief for exempting pension plans from the anti-fraud provisions of the securities acts. Nor does the fact that ERISA provides for disclosure of a plethora of information after its effective date of January 1, 1975.<sup>54</sup> and that

continued ministration of disclosure type legislation. However, as the official representatives of the Securities and Exchange Commission clearly indicated that they did not feel they were the proper agency to handle the administration of this type of legislation and as they felt that the taking on of this function might interfere with their presently established functions, this consideration was abandoned."

S.Rep. No. 1440, 85th Cong., 2d Sess., reprinted at 3 U.S. Code Cong. & Admin. News, 4137, 4156 (1958). See also 1957 Hearings at 107, 119. The SEC's decision not to accept a regulatory role to enforce disclosure of material investment information was largely based on the conclusion that:

"Inasinuch as welfare and pension plan beneficiaries generally have no individual choice as to the securities to be purchased by a welfare or pension fund, the type of meaningful information to be furnished to them as to the management, investments and transactions of their funds may involve quite different criteria from those presently employed by the Commission under the various Federal Securities Acts." Id. at 119.

The SEC did not apparently object to being given plenary jurisdiction over individual retirement accounts. ERISA Leg. Hist., Vol. III at 4605. Nor was the Congress that enacted ERISA unaware that the SEC considered interests in pension funds to be securities under the 1933 Act unless excepted. See note 31 supra.

It should be noted that the defendants concede that certain voluntary and contributory pension plans are subject to both the securities laws' registration requirements and ERISA (Rep. Br. 206). The securities laws apparently have not torpedoed such plans. This seems to follow from the continuing registration of such plans. In fact, the disclosure requirements are becoming complementary as the SEC in its revisions of Form S-8 attempts to avoid duplication of, but not defer to the ERISA requirements. Form S-8. Sec. Act Release No. 33-5488 (1974), CCH Fed. Sec. L.Rep. 7197; Sec. Act Release No. 5767 (Nov. 22, 1976), [76-77 Transfer Binder] CCH Fed. Sec. L.Rep. 780,809; SEC v. Garfinkle [74-75] Transfer Binder] CCH Fed. Sec. L.Rep. 795,020 (S.D. N.Y. 1975).

The Senate Report on the 1958 pension act explained: "Serious consideration was given earlier to placing the administration of the bill with the Securities and Exchange Commission on the basis of its past experience in the ad-

it heavily regulates the pension industry ipso facto dictate that pension funds should enjoy a blanket exemption from the anti-fraud sections. Although banks and life insurance companies are subject to stringent regulation, bank securities and insurance variable annuities and flexible funds are subject to the anti-fraud rules of the securities acts, even though they are sometimes exempt from the registration regulations of the acts. Tcherepnin v. Knight, 389 U.S. 332; SEC v. Variable Annuity Life Insurance Co., 359 U.S. 65; SEC v. United Benefit Life Ins. Co., 387 U.S. 202; SEC v. National Securities, Inc., 393 U.S. 453.

Reading the anti-fraud provisions of the securities laws to be complementary to the requirements of ERISA makes good sense. The requirements of ERISA do not substitute for the protections afforded by the antifraud provisions because the securities laws require that all material facts, including, of course, risk of loss, be disclosed prior to the investment decision (TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438) while ERISA disclosure limits itself to the plan provisions55 without a particularizing of how or how likely benefits may be lost (ERISA Section 102 (29 U.S.C. § 1022)) and may be made 90 days subsequent to the investment commitment.56 ERISA Section 104(b)(1)(A) (29 U.S.C. § 1024(b)(1)(A) ). Defendants have not shown that ERISA would provide relief to persons who have acquired an interest in a pension fund where false or misleading

representations have been made at inception or during subsequent ratifications or upon a job offer.57 Affirmance of the judgment below will supplement ERISA by providing a self-executing compulsion to disclose adequate information at such times, including a statistically determinable risk that many employees covered by a plan will never receive their pension benefits.58 Thus the anti-fraud provisions of the securities acts will protect the interests of an investor before he makes an investment decision, while ERISA serves employees who have been employed for a substantial period of time at a job covered by a pension plan, protecting them from losing benefits through ignorance of the plan provisions. Consequently, we conclude it would be unwarranted to impute an intent on the part of Congress for ERISA to override the federal or state securities laws, SEC v. Garfinkle [74-75 Transfer Binder] CCH Fed. Sec. L. Rep. ¶ 95,020 (S.D. N.Y. 1975), where protections offered by ERISA do not fully overlap those of the anti-fraud provisions of the securities acts. Cf. Califano v. Sanders, 45 LW 4209, 4210-4211.

ERISA has other post-hoc disclosure times. Thus the amended provisions of a pension plan need not be disclosed until after adopted (ERISA Section 104(b)(1)(B) (29 U.S.C. § 1024(b)(1)(B)) and then only summaries of the changed provisions are given until five years later when they must be incorporated into the integrated plan summary. In the establishment of a new plan, disclosure can occur within four months of adoption. Id.

Circumscribing the utility of ERISA disclosure further are the widespread disclaimers of liability for incorrect plans description or analysis which are contained in most post-ERISA summary plan description booklets. Under Section 14 of the 1933 Act and Section 29 of the 1934 Act, waivers of liability regarding securities are ineffective. See Wilko v. Swan, 346 U.S. 427; Weissbuch v. Merrill Lynch, Pierce, Fenner & Smith Inc., ..... F.2d ..... (7th Cir. July 26, 1977).

<sup>57</sup> Moreover the denial of pension benefits to John Daniel occurred before the effective date of ERISA. Section 502(a) of ERISA, 29 U.S.C. § 1132(a), provides a right of action for a pension fund beneficiary "to obtain \* \* appropriate equitable relief \* \* to redress \* violations" of any provision of Title I of ERISA ("Protection of Employee Benefit Rights") 29 U.S.C. §§ 1001-1144. However, there is no provision of Title I which generally prohibits the making of false or misleading representations to an employee concerning the pension fund. 58 "ERISA § 102(b) (29 U.S.C. § 1022(b)) requires that summary plan descriptions include a statement of 'circumstances which may result in disqualification, ineligibility, or denial or loss of benefits.' In theory, employees should be able to infer from this information in the plan description that there is a risk of loss, and perhaps the nature of that risk. The Department of Labor has interpreted the statutory language very narrowly, however, in proposed rules issued on June 9, 1975, 40 Fed. Reg. 24654, on which the Department has stated plan administrators may rely. 41 Fed. Reg. 16957 (April 23, 1976). Plan administrators are permitted to describe the benefits of the plan in positive language, leaving the employee to deduce the negatives implicit in the affirmative language. (IPIR Br. at 21 n \*)

Judge Kirkland's disposition is not repugnant to the regulatory scheme outlined by ERISA. Although the defendants assert any remedy given plaintiff would contravene Section 203(b)(1)(F) of ERISA (29 U.S.C. § 1053(b)(1)(F))59 because that Section permits pension plans to disregard nonforfeitable years of service before the September 2, 1974, effective date of that statute if, as here, the employee would not have been entitled to benefits because of a break in continuous service under his pension plan, the district court can fashion relief to avoid a conflict with ERISA if plaintiff should prevail on the merits. Judge Kirkland has not, contrary to ERISA, held defendants' twenty-year continuous service rule invalid. His opinion merely holds that it and other essential matters had to be disclosed, and defendants will doubtless attempt to show at trial that plaintiff was aware of that and other key requirements.

## Effect on Labor-Management Relations

Even if ERISA does not exempt pension plans from the securities acts, it is argued that a resultant devastating effect on labor-management relations in and of itself should require an exemption in the absence of specific inclusory language in the securities acts. But holding the anti-fraud provisions to be applicable here will not destroy labor-management relations as defendants and the amici who support their position insist, for the anti-fraud provisions only probe fraudulent conduct such as the making of false or misleading representations. They do not require any complex filings. Moreover, most pension plans have been specifically exempted from the registration requirements of the 1933

Act. 15 U.S.C. § 77c(a)(2)(A). Since a sale triggering the anti-fraud provisions would normally occur when an employee decides to accept or continue in a job, the holding below would not be disruptive of the collective bargaining process. Indeed, the application of the antifraud provisions of the securities laws should enhance federal labor policy by augmenting the unchallenged statutory right of workers to be fairly represented by their union (Local 705 Br. 14 n. 31; 29 U.S.C. § 185; Vaca v. Sipes, 386 U.S. 171). And as amicus Gray Panthers point out, such an application will further the purpose of Section 302(c)(5) of the Labor Management Relations Act (29 U.S.C. § 186(c)(5)) by letting each employee know to what he is entitled under a union pension fund. 2 NLRB, Legislative History of Labor Management Relations Act of 1947, 1305 (1948). The only negative effect on unions qua unions will be in preventing them from defrauding their rank and file with impunity. See Walsh v. Schlecht, ..... U.S. ...., 45 LW 4126, 4128,

In sum, Congress has nowhere provided that the antifraud provisions of the securities acts should not apply to pension funds. The Secretary of Labor's arguments that affirmance will undermine a union's authority as exclusive bargaining agent for its employees vis-à-vis the employer or will disrupt the bargaining process are specious. Of course a finding of liability implies nothing about the entirely separate and not uncomplicated question of the form of relief which is a matter for the trial court, and the construction of formulae giving the measure of damages is for the trial court in the first instance. Mills v. Electric Auto-Lite Co., 396 U.S. 375, 386; Shapiro v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 495 F.2d 228, 241 (2d Cir. 1974). Furthermore, as amicus Institute for Public Interest Representation has shown, current employees need not be disadvantaged because of the generous amortization and waiver provisions contained in Sections 302, 303 and 304 of ERISA (29 U.S.C. §§ 1082-1084). It is for the district court to construct a remedy which properly balances the needs of plaintiff against those of other fund participants.

<sup>59</sup> Section 203(b)(1)(F) provides:

<sup>&</sup>quot;(b)(1) In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under subsection (a)(2) of this section, all of an employee's years of service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded:

<sup>&</sup>quot;(F) years of service before this part first applies to the plan if such service would have been disregarded under the rules of the plan with regard to breaks in service, as in effect on the applicable date."

The Parade of Horribles

The parade of horribles offered by defendants and the amici who support their position (including their predictions of \$200 billion liabilities) results mainly from their zeal as advocates and should not distract a court from enforcing the Congressional policies contained in the anti-fraud provisions of the securities laws.60 Finally, we wish to emphasize that we are not holding the registration requirements of the 1933 Act or the reporting requirements of the 1934 Act to be applicable to these pension funds.61 We do not require the filing of any document or establish judicial control over pension fund operations. There should be no undue burden caused by the type of disclosure the anti-fraud provisions would encourage because all of the material information will be readily available to the plan trustees since their actuaries needed all of the information in order to set up the plan in the first place.

See Northern Securities Co. v. United States, 193 U.S. 197, 351-352 (plurality opinion).

Because of the longtime and consistent administrative practice, these pension funds might be deemed beyond the scope of the registration requirements even if they are not already exempted by 15 U.S.C. § 77c(a)(2)(A). The SEC maintains 96% of all pension plans are so exempted apparently because most funds, including Local 705's, are invested by the trust departments of major banks. (Hansen Ex. 1, App. 184a at 14-15):

"There is only one affirmative condition — qualification under Section 401 of the Internal Revenue Code — that a pension plan must meet in order to qualify for this exemption. It has been estimated that 96% of pension plans satisfy this condition. See S. Rep. No. 92-1150, 92d Cong., 2d Sess. 110 (1972). There is also a negative condition; the exemption is lost if the plan invests an amount greater than the employer's contributions in securities of the employer." (SEC Br. at 59 n. 81).

Because the seller is the pension trust operating through the trustees, the amended complaint does not include Daniel's employers as defendants. Therefore, this opinion does not consider any possible obligations of employers under the 1933 and 1934 Acts with regard to pension plans.

Moreover, plan liability, given the fact that employees' interests in pension funds are covered by the anti-fraudprovisions of the securities acts, is still limited by a number of factors. Particular employees must show, in light of all the ambient circumstances, justifiable reliance on a material misrepresentation or omission causing him injury. If all material facts are disclosed in a manner comprehensible to the average worker, as in any other securities fraud case, no damage causation will exist under the securities laws. Sundstrand Corp. v. Sun Chemical Corp., 553 F.2d 1033, 1049-1051 (7th Cir. 1977). Thus if the plan documents sent to a plan beneficiary understandably disclose this information, a retiree who does not meet the vesting requirements will have no remedy under the securities acts, even if he subjectively did not comprehend the disclosed information. In addition, other pension funds may be immunized by the applicable statute of limitations. These considerations, as well as others, may arise here and in future cases as constraints on plan liability.

ORDER AFFIRMED.

TONE, Circuit Judge, concurring. I am able to agree with much that Judge Cummings says in his scholarly opinion for the court, but certain doubts lead me to write separately.

For me, this is a close and difficult case. I am beset by the same doubts arising from the ordinary meaning of the words "security," "investment contract," and "sale" and from Congress' basic purpose in adopting the Securities Acts that must have influenced the several district judges who have reached conclusions inconsistent with ours. Hurn v. Retirement Trust Fund, Etc., 424 F.Supp. 80 (C.D. Cal. 1976); Wiens v. International Brotherhood of Teamsters, BNA Securities and Law Report (No. 397, April 6, 1977, p. A-13) (C.D. Cal. 1977); Robinson v. United Mine Workers of America Health and Retirement Funds, Civ. No. 77-0698 (D.D.C. July 29, 1977) (as yet unreported). The series of transactions by which Daniel acquired his interest or expectancy, such as it was, do not fit neatly into the traditional concept of a sale of a security. In addition, it may well be, as Judge Gesell believes (see Robinson, supra), that the Forman case (United Housing Foundation, Inc. v. Forman, 421 U.S. 837 (1975)) and other recent Supreme Court decisions indicate "a pronounced disfavor with attempts to stretch the securities laws beyond their traditional scope." Nevertheless, considering the breadth of the definitions of "investment contract" and "sale" in the statutes themselves and the interpretation of those terms in cases we must still regard as authoritative, I believe the balance tips in favor of the plaintiff's position.

In reaching this conclusion, I have found little comfort in the opinion expressed by the SEC, as amicus curiae. Apparently for the first time ever, it now takes the position in its brief before us that the employee's interest or expectancy in a plan such as this is subject to the anti-fraud provisions of the securities laws. The Commission has not been as candid as we might have hoped in acknowledging and explaining its change in position. As late as 1971 in its Institutional Investor Study submitted to Congress in connection with the consideration of the ERISA legislation, the Commission's view was that although a non-contributory pension plan

might well be an investment contract, the element of sale was lacking.1 Before that, not even the existence of a security was acknowledged. It is true that the Commission's attention seems to have been focused largely on registration requirements rather than the antifraud provisions,2 but there appears to have been no intimation over the years that it viewed the antifraud provisions as applicable. The statement in the Institutional Investor Study that the Commission staff "has taken the position that the Securities Act [of 1933] does not apply"s seemed to refer to all the disclosure provisions of that Act, not merely its registration provisions. It should be added, however, that the SEC's former position appears to have initially been based in large part on the unduly restrictive view that the employer's contribution on behalf of the employee was a gift and that a necessary volitional element was lacking; and, so far as its public statements disclose, the Commission persisted in that position without any real reexamination of its basis.

Members of Congress considering legislative proposals after the adoption of the securities acts who relied on the SEC's interpretation of those acts must have understood that they did not apply to transactions of the kind before us. It is realistic, however, to believe that most members of Congress understood that the SEC is not infallible, that the Supreme Court has been known to disagree with that agency's interpretation of the securities acts, and that the applicability of those acts to various kinds of transactions, including non-contributory

<sup>3</sup> SEC Institutional Investor Study 996 (1971).

<sup>&</sup>lt;sup>2</sup> Between which a distinction can rationally be drawn. See SEC v. National Securities, Inc., 393 U.S. 453 (1969).

<sup>3</sup> Cited at note 1, supra.

pension plans, has yet to be determined by the Supreme Court. It appears likely that Congress has chosen to leave the matter in that posture. I find no persuasive evidence to the contrary in the legislative history subsequent to the adoption of the securities laws.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

Order Granting Certiorari

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77-753

INT. BRO. OF TEAMSTERS, et al. v. DANIEL, JOHN

77-754

LOCAL 705, TEAMSTERS, et al. v. DANIEL, JOHN

The motion of American Bankers Association for leave to file a brief, as amicus curiae, in No. 77-753 is granted. The motion of National Association of Manufacturers for leave to file a brief, as amicus curiae, is granted. The motion of ERISA Industry Committee for leave to file a brief, as amicus curiae, is granted. The motion of National Coordinating Committee for Multiemployer Plans for leave to file a brief, as amicus curiae, is granted. The motion of American Federation of Labor and Congress of Industrial Organizations for leave to file a brief, as amicus curiae, is granted. The motion of Gray Panthers for leave to file a brief, as amicus curiae, is granted. The petitions for writs of certiorari are granted, the cases are consolidated and a total of one hour is allotted for oral argument.